

HOUSE BILL No. 2344

By Committee on Corrections and Juvenile Justice

2-8

9 AN ACT concerning the Kansas code for care of children; relating to
10 compulsory school attendance; dispositions; amending K.S.A. 38-1501
11 and 38-1563 and K.S.A. 2004 Supp. 38-1502 and repealing the existing
12 sections.

13

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

15 Section 1. K.S.A. 38-1501 is hereby amended to read as follows: 38-
16 1501. (a) K.S.A. 38-1501 ~~through 38-1503~~ *et seq.*, and amendments
17 *thereto*, shall be known as and may be cited as the Kansas code for care
18 of children ~~and~~. *This code* shall be liberally construed, to the end that
19 each child within its provisions shall receive the care, custody, guidance,
20 control and discipline, preferably in the child's own home, as will best
21 serve the child's welfare and the best interests of the state. All proceed-
22 ings, orders, judgments and decrees shall be deemed to have been taken
23 and done in the exercise of the parental power of the state. Proceedings
24 pursuant to this code shall be civil in nature.

25 (b) *A violation of the compulsory attendance laws of this state shall*
26 *not constitute the commission of a criminal act.*

27 Sec. 2. K.S.A. 2004 Supp. 38-1502 is hereby amended to read as
28 follows: 38-1502. As used in this code, unless the context otherwise
29 indicates:

30 (a) "Child in need of care" means a person less than 18 years of age
31 who:

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

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

37 (3) has been physically, mentally or emotionally abused or neglected
38 or sexually abused;

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

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

41 (6) (A) *while under the age of 14 years*, is not attending school as
42 required by K.S.A. 72-977 or 72-1111, and amendments thereto, *except*
43 *that the court may determine the child to not be a child in need of care*

- 1 *if the court finds that the child is not attending school due to danger to*
2 *the child in the school environment. If the court determines failure to*
3 *attend is due to danger, the court shall insure that the child is receiving*
4 *an education in another setting; or*
- 5 (B) *while age 14 years or older, is not attending school as required*
6 *by K.S.A. 72-977 or 72-1111, and amendments thereto, except that the*
7 *court may determine the child to not be a child in need of care if the court*
8 *finds that the child is not attending school due to danger to the child in*
9 *the school environment. If the court determines failure to attend is due to*
10 *danger, the court shall insure that the child is receiving and education in*
11 *another setting;*
- 12 (7) *except in the case of a violation of K.S.A. 41-727, subsection (j)*
13 *of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-*
14 *ments thereto, or, except as provided in subsection (a)(12) ~~of~~ or K.S.A.*
15 *21-4204a, and amendments thereto, does an act which, when committed*
16 *by a person under 18 years of age, is prohibited by state law, city ordi-*
17 *nance or county resolution but which is not prohibited when done by an*
18 *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 *for juveniles* which is operated
25 or structured so as to ensure that all entrances and exits from the facility
26 are under the exclusive control of the staff of the facility, whether or not
27 the person being detained has freedom of movement within the perim-
28 eters of the facility, or which relies on locked rooms and buildings, fences
29 or physical restraint in order to control behavior of its residents. No secure
30 facility 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 likelihood of harm and the acts or omissions are not due
23 solely to the lack of financial means of the child’s parents or other cus-
24 todian. 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;
- 27 (2) failure to provide adequate supervision of a child or to remove a
28 child from a situation which requires judgment or actions beyond the
29 child’s level of maturity, physical condition or mental abilities and that
30 results in bodily injury or a likelihood of harm to the child; or
- 31 (3) failure to use resources available to treat a diagnosed medical
32 condition if such treatment will make a child substantially more com-
33 fortable, reduce pain and suffering, correct or substantially diminish a
34 crippling condition from worsening. A parent legitimately practicing re-
35 ligious beliefs who does not provide specified medical treatment for a
36 child because of religious beliefs shall not for that reason be considered
37 a negligent parent; however, this exception shall not preclude a court from
38 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
39 amendments thereto.
- 40 (dd) “Community services team” means a group of persons, ap-
41 pointed by the court or by the state department of social and rehabilita-
42 tion services for the purpose of assessing the needs of a child who is
43 alleged to be a child in need of care.

1 Sec. 3. K.S.A. 38-1563 is hereby amended to read as follows: 38-
2 1563. (a) After consideration of any evidence offered relating to disposi-
3 tion, the court may retain jurisdiction and place the child in the custody
4 of the child's parent subject to terms and conditions which the court
5 prescribes to assure the proper care and protection of the child, including
6 supervision of the child and the parent by a court services officer, or may
7 order the child and the parent to participate in programs operated by the
8 secretary or another appropriate individual or agency. The terms and
9 conditions may require any special treatment or care which the child
10 needs for the child's physical, mental or emotional health.

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

16 (c) The court may order the child and the parents of any child who
17 has been adjudged a child in need of care to attend counseling sessions
18 as the court directs. The expense of the counseling may be assessed as
19 an expense in the case. No mental health center shall charge a greater
20 fee for court-ordered counseling than the center would have charged to
21 the person receiving counseling if the person had requested counseling
22 on the person's own initiative.

23 (d) If the court finds that placing the child in the custody of a parent
24 will not assure protection from physical, mental or emotional abuse or
25 neglect or sexual abuse or is contrary to the welfare of the child or that
26 placement would be in the best interests of the child, the court shall enter
27 an order awarding custody of the child, until the further order of the
28 court, to one of the following:

29 (1) A relative of the child or a person with whom the child has close
30 emotional ties;

31 (2) any other suitable person;

32 (3) a shelter facility; or

33 (4) the secretary.

34 If the child is adjudged to be a child in need of care, the court shall
35 not place the child in the custody of the secretary if the court has received
36 from the secretary; written documentation of the services ~~and/or~~ *and/or* com-
37 munity services plan, *or both*, offered or delivered to prevent the need
38 for such custody unless the court finds that the services documented by
39 the secretary are insufficient to protect the safety of the child and that
40 being in the custody of the parent with such services in place is contrary
41 to the welfare or that placement is in the best interests of the child. The
42 court shall have the authority to require any person or entity agreeing to
43 participate in the plan to perform as set out in the plan. The secretary

1 shall present to the court in writing the specific actions taken to maintain
2 the family unit and prevent the unnecessary removal of the child from
3 the child's home.

4 In making such a custody order, the court shall give preference, to the
5 extent that the court finds it is in the best interests of the child, first to
6 granting custody to a relative of the child and second to granting custody
7 of the child to a person with whom the child has close emotional ties. If
8 the court has awarded legal custody based on the finding specified by this
9 subsection, the legal custodian shall not return the child to the home of
10 that parent without the written consent of the court.

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

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

14 (2) The secretary shall notify the court in writing of any placement
15 of the child or, within 10 days of the order awarding the custody of the
16 child to the secretary, any proposed placement of the child, whichever
17 occurs first.

18 (3) The court may determine if such placement is contrary to the
19 welfare or in the best interests of the child, and if the court determines
20 that such placement is not in the best interests of the child, the court
21 shall notify the secretary who shall then make an alternative placement
22 subject to the procedures established in this paragraph. In determining
23 if such placement is in the best interests of the child, the court, after
24 providing the parties with an opportunity to be heard, shall consider the
25 health and safety needs of the child and the resources available to meet
26 the needs of children in the custody of the secretary.

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

33 (f) If custody of a child is awarded under this section to a person
34 other than the child's parent, the court may grant any individual reason-
35 able rights to visit the child upon motion of the individual and a finding
36 that the visitation rights would be in the best interests of the child.

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

43 (h) The court shall not enter an order removing a child from the

1 custody of a parent pursuant to this section unless the court first finds
2 from evidence presented by the petitioner that reasonable efforts have
3 been made to maintain the family unit and prevent the unnecessary re-
4 moval of the child from the child's home or that reasonable efforts are
5 not necessary because reintegration is not a viable alternative; or that an
6 emergency exists which threatens the safety of the child and that allowing
7 the child to remain in the home is contrary to the welfare of the child or
8 that placement would be in the best interest of the child. If the child is
9 placed in the custody of the secretary, the court shall provide the secretary
10 with a copy of any orders entered for the purpose of documenting these
11 orders within 10 days of making the order. Reintegration may not be a
12 viable alternative when the: (1) Parent has been found by a court to have
13 committed murder in the first degree, K.S.A. 21-3401, and amendments
14 thereto, murder in the second degree, K.S.A. 21-3402, and amendments
15 thereto, capital murder, K.S.A. 21-3439, and amendments thereto, vol-
16 untary manslaughter, K.S.A. 21-3403, and amendments thereto, or vio-
17 lated a law of another state which prohibits such murder or manslaughter
18 of a child; (2) parent aided or abetted, attempted, conspired or solicited
19 to commit such murder or voluntary manslaughter of a child as provided
20 in subsection (h)(1); (3) parent committed a felony battery that resulted
21 in bodily injury to the child or another child; (4) parent has subjected the
22 child or another child to aggravated circumstances as defined in K.S.A.
23 38-1502, and amendments thereto; (5) parental rights of the parent to
24 another child have been terminated involuntarily or (6) the child has been
25 in extended out of home placement as defined in K.S.A. 38-1502, and
26 amendments thereto. Such findings shall be included in any order entered
27 by the court.

28 (i) In addition to or in lieu of any other order authorized by this
29 section, if a child is adjudged to be a child in need of care by reason of a
30 violation of the uniform controlled substances act, ~~(K.S.A. 65-4101 et seq.,~~
31 ~~and amendments thereto, or K.S.A. 8-1599, 41-719, 41-804, 41-2719, 65-~~
32 ~~4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court~~
33 shall order the child to submit to and complete an alcohol and drug eval-
34 uation by a community-based alcohol and drug safety action program
35 certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay
36 a fee not to exceed the fee established by that statute for such evaluation.
37 If the court finds that the child and those legally liable for the child's
38 support are indigent, the fee may be waived. In no event shall the fee be
39 assessed against the secretary or the department of social and rehabili-
40 tation services.

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

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

20 *(k) If a child is found to be a child in need of care pursuant to sub-*
21 *section (a)(6)(B) of K.S.A. 38-1502, and amendments thereto, in addition*
22 *to other authorized dispositions, the court may:*

23 *(1) Place the child under a house arrest program administered by the*
24 *court pursuant to K.S.A. 21-4603b, and amendments thereto;*

25 *(2) order the parent or guardian to participate in parenting classes;*

26 *(3) order the child to participate in a program of education offered*
27 *by the school district in which the child resides including placement in*
28 *an alternative education program approved by the local board of*
29 *education;*

30 *(4) suspend the child's driver's license or privilege to operate a motor*
31 *vehicle on the streets and highways of this state. The duration of the*
32 *suspension ordered by the court shall be for a definite time period to be*
33 *determined by the court. Upon suspension of a license pursuant to this*
34 *subsection, the court shall require the child to surrender the license to the*
35 *court. The court shall transmit the license to the division of motor vehicles*
36 *of the department of revenue, to be retained until the period of suspension*
37 *expires. At that time, the licensee may apply to the division for return of*
38 *the license. If the license has expired, the child may apply for a new*
39 *license, which shall be issued promptly upon payment of the proper fee*
40 *and satisfaction of other conditions established by law for obtaining a*
41 *license unless another suspension or revocation of the child's privilege to*
42 *operate a motor vehicle is in effect. As used in this subsection, "highway"*
43 *and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473,*

1 *and amendments thereto. Any child who does not have a driver's license*
2 *may have such child's driving privileges revoked. No Kansas driver's li-*
3 *cence shall be issued to a child whose driving privileges have been revoked*
4 *pursuant to this section for a definite time period to be determined by the*
5 *court;*

6 (5) *in lieu of suspending the driver's license or privilege to operate a*
7 *motor vehicle on the highways of this state of any child as provided in*
8 *subsection (4), enter an order which places conditions on such child's*
9 *privilege of operating a motor vehicle on the streets and highways of this*
10 *state, a certified copy of which such child shall be required to carry any*
11 *time such child is operating a motor vehicle on the streets and highways*
12 *of this state. Any such order shall prescribe the duration of the conditions*
13 *imposed and shall specify that such duration shall be for a definite time*
14 *period to be determined by the court. Upon entering an order restricting*
15 *a child's license as provided in this subsection, the court shall require such*
16 *child to surrender such child's driver's license to the court. The court shall*
17 *transmit the license to the division of vehicles, together with a copy of the*
18 *order. Upon receipt, the division of vehicles shall issue without charge a*
19 *driver's license which shall indicate on its face that conditions have been*
20 *imposed on such child's privilege of operating a motor vehicle and that a*
21 *certified copy of the order imposing such conditions is required to be*
22 *carried by the child for whom the license was issued any time such child*
23 *is operating a motor vehicle on the streets and highways of this state. If*
24 *the child is a nonresident, the court shall cause a copy of the order to be*
25 *transmitted to the division and the division shall forward a copy of it to*
26 *the motor vehicle administrator of such child's state of residence. Such*
27 *court shall furnish to any child whose driver's license has had conditions*
28 *imposed on it under this section a copy of the order, which shall be rec-*
29 *ognized as a valid Kansas driver's license until such time as the division*
30 *shall issue the restricted license provided for in this subsection. Upon*
31 *expiration of the period of time for which conditions are imposed pursuant*
32 *to this subsection, the licensee may apply to the division for the return of*
33 *the license previously surrendered by such licensee. In the event such*
34 *license has expired, such child may apply to the division for a new license,*
35 *which shall be issued immediately by the division upon payment of the*
36 *proper fee and satisfaction of the other conditions established by law,*
37 *unless such child's privilege to operate a motor vehicle on the streets and*
38 *highways of this state has been suspended or revoked prior thereto. If any*
39 *child shall violate any of the conditions imposed under this subsection,*
40 *such child's driver's license or privilege to operate a motor vehicle on the*
41 *streets and highways of this state shall be revoked for a period as deter-*
42 *mined by the court in which such child is convicted of violating such*
43 *conditions;*

1 (6) order the child or parent or guardian or combination thereof to
2 pay a fine not exceeding \$500;

3 (7) order the child to perform community service, as set by the court;
4 or

5 (8) order the child to participate in a diversion program, in accord-
6 ance with the provisions of chapter 22, article 29.

7 New Sec. 4. (a) *Valid court order.* During proceedings under this
8 code, the court may enter an order directing a child who has been ad-
9 judicated a child in need of care pursuant to subsection (a)(6)(B) of K.S.A. 38-
10 1502, and amendments thereto, to attend school without any unex-
11 cused absences or comply fully with conditions of house arrest if:

12 (1) The court makes a finding that the child has been adjudicated to
13 be a child in need of care pursuant to subsection (a)(6)(B) of K.S.A. 38-
14 1502, and amendments thereto, and the court determines that the child
15 has failed to attend school as required by K.S.A. 72-977 or 72-1111, and
16 amendments thereto, since the child's adjudication or violated terms of
17 house arrest imposed pursuant to subsection (k)(1) of K.S.A. 38-1563,
18 and amendments thereto;

19 (2) the child and the child's guardian ad litem are present before the
20 court at the time the order is entered; and

21 (3) the child and the child's guardian ad litem are given adequate and
22 fair warning, both orally and in writing, of the consequences of violation
23 of the order and copy of such warning is recorded in the official file of
24 the case.

25 (b) *Application.* Any person may file with the court a verified appli-
26 cation for a determination that a child has violated an order entered pur-
27 suant to subsection (a) and for an order authorizing the holding of such
28 child in a secure facility as provided by this section. Such application shall
29 state the applicant's belief that the child has violated a valid court order
30 entered pursuant to subsection (a) and the specific facts which are relied
31 upon to support the belief.

32 (c) *Ex parte order.* Upon the filing of an application in accordance
33 with subsection (b), the court may enter *ex parte* an order directing that
34 the child be taken into custody and held in a secure facility designated
35 by the court if the court determines that there is probable cause to believe
36 the allegations in the application. The order shall remain in effect for not
37 more than 24 hours following the child being taken into custody. The
38 order shall be served on the child's parents, any legal custodian of the
39 child and the child's guardian ad litem.

40 (d) *Preliminary hearing.* Within 24 hours following a child being
41 taken into custody pursuant to an order issued under subsection (c), the
42 court shall hold a hearing to determine whether the child admits or denies
43 the allegations of the application and, if the child denies such allegations,

1 whether there is probable cause to hold the child in a secure facility
2 pending a hearing on the application pursuant to subsection (e). Notice
3 of the time and place of the preliminary hearing shall be given orally or
4 in writing to the child's parents, any legal custodian of the child and the
5 child's guardian ad litem. At the hearing, the child shall have the right to:

6 (1) Have in writing the alleged violation and the facts relied upon in
7 the application;

8 (2) a guardian ad litem pursuant to K.S.A. 38-1505, and amendments
9 thereto; and

10 (3) the right to confront and present witnesses.

11 If, upon the hearing, the court finds that the child admits the allegations
12 of the application, the court shall proceed without delay to hold a hearing
13 on the application pursuant to subsection (e). If, upon the hearing, the
14 court finds that the child denies the allegations of the application, the
15 court may enter an order directing that the child be held in a secure
16 facility pending a hearing pursuant to subsection (e) if the court finds
17 that there is probable cause to believe that the child has violated a valid
18 court order entered pursuant to subsection (a) and that secure detention
19 of the child is necessary for the protection of the child or to assure the
20 appearance of the child at the hearing on the application pursuant to
21 subsection (e).

22 (e) *Hearing on violation of order; authorization.* The court shall hold
23 a hearing on an application filed pursuant to subsection (b) within 24
24 hours following the child being taken into custody, if the child admits the
25 allegations of the application, or within 72 hours following the child being
26 taken into custody, if secure detention of the child is ordered pursuant
27 to subsection (d). Notice of the time and place of such hearing shall be
28 given orally or in writing to the child's parents, any legal custodian of the
29 child and the child's guardian ad litem. Upon such hearing, the court may
30 enter an order awarding custody of the child to:

31 (1) A parent;

32 (2) a person other than the parent or other person having custody,
33 who shall not be required to be licensed under article 5 of chapter 65 of
34 the Kansas Statutes Annotated, and amendments thereto;

35 (3) a youth residential facility; or

36 (4) the secretary, if the secretary does not already have legal custody
37 of the child, and authorizing the custodian to place the child in a secure
38 facility if the custodian determines:

39 (A) That the child has been adjudicated to be a child in need of care
40 pursuant to subsection (a)(6)(B) of K.S.A. 38-1502, and amendments
41 thereto;

42 (B) that the child has violated a valid court order entered pursuant
43 to subsection (a);

- 1 (C) that the child has been provided at the hearing with the right to:
2 (i) Have the alleged violation in writing and served upon the child in
3 a reasonable time before the hearing;
4 (ii) a hearing before the court on the issue of placement in a secure
5 facility;
6 (iii) an explanation of the nature and consequences of the proceeding;
7 (iv) a guardian ad litem pursuant to K.S.A. 38-1505, and amendments
8 thereto;
9 (v) confront and present witnesses;
10 (vi) have a transcript or record of the proceedings; and
11 (vii) appeal; and
12 (D) that the reasons for the child's behavior makes any disposition
13 other than secure confinement clearly inappropriate or that any disposi-
14 tion other than secure confinement has been exhausted, based on a writ-
15 ten report submitted by the secretary, if the child is in the custody of the
16 secretary, or submitted by a public agency independent of the court and
17 law enforcement, if the child is in the custody of someone other than the
18 secretary that reviews the behavior of the child and the circumstances
19 under which the child was brought before the court and made subject to
20 such order.
21 The authorization to place a child in a secure facility pursuant to this
22 subsection shall expire 60 days after it is issued, including Saturdays, Sun-
23 days and legal holidays. The court may grant extensions of such authori-
24 zation for two additional periods not exceeding 60 days, including Sat-
25 urdays, Sundays and legal holidays, upon rehearing pursuant to K.S.A.
26 38-1564, and amendments thereto. Payment by the secretary to a secure
27 facility for child care services provided pursuant to this subsection shall
28 be made only upon receipt by the secretary of a copy of a valid court
29 order.
30 (f) *Limitations on facilities used.* Nothing in this section shall author-
31 ize placement of a child in an adult jail or lockup. Secure placement is
32 limited to secure facilities.
33 (g) *Time limits, computation.* Except as otherwise specifically pro-
34 vided by subsection (e), Saturdays, Sundays and legal holidays shall not
35 be counted in computing any time limit imposed by this section.
36 (h) The child's parent or parents may be assessed the costs of place-
37 ment in a secure facility for any child placed pursuant to this section.
38 These costs may be assessed directly as costs by the court, through an
39 order of child support or through other means as approved by the court.
40 (i) This section shall be part of and supplemental to the Kansas code
41 for care of children.
42 Sec. 5. K.S.A. 38-1501 and 38-1563 and K.S.A. 2004 Supp. 38-1502
43 are hereby repealed.

1 Sec. 6. This act shall take effect and be in force from and after its
2 publication in the statute book.