

HOUSE BILL No. 2456

By Committee on Judiciary

2-11

9 AN ACT concerning children in need of care; foster parents as interested
10 parties; custody awarded to the secretary; false reporting of abuse;
11 amending K.S.A. 38-1541 and 38-1563 and K.S.A. 2004 Supp. 38-1522
12 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2004 Supp. 38-1522 is hereby amended to read as
16 follows: 38-1522. (a) When any of the following persons has reason to
17 suspect that a child has been injured as a result of physical, mental or
18 emotional abuse or neglect or sexual abuse, the person shall report the
19 matter promptly as provided in subsection (c) or (e): Persons licensed to
20 practice the healing arts or dentistry; persons licensed to practice optom-
21 etry; persons engaged in postgraduate training programs approved by the
22 state board of healing arts; licensed psychologists; licensed masters level
23 psychologists; licensed clinical psychotherapists; licensed professional or
24 practical nurses examining, attending or treating a child under the age of
25 18; teachers, school administrators or other employees of a school which
26 the child is attending; chief administrative officers of medical care facil-
27 ities; licensed marriage and family therapists; licensed clinical marriage
28 and family therapists; licensed professional counselors; licensed clinical
29 professional counselors; registered alcohol and drug abuse counselors;
30 persons licensed by the secretary of health and environment to provide
31 child care services or the employees of persons so licensed at the place
32 where the child care services are being provided to the child; licensed
33 social workers; firefighters; emergency medical services personnel; me-
34 diators appointed under K.S.A. 23-602 and amendments thereto; juvenile
35 intake and assessment workers; and law enforcement officers. The report
36 may be made orally and shall be followed by a written report if requested.
37 When the suspicion is the result of medical examination or treatment of
38 a child by a member of the staff of a medical care facility or similar
39 institution, that staff member shall immediately notify the superinten-
40 dent, manager or other person in charge of the institution who shall make
41 a written report forthwith. Every written report shall contain, if known,
42 the names and addresses of the child and the child's parents or other
43 persons responsible for the child's care, the child's age, the nature and

1 extent of the child's injury (including any evidence of previous injuries)
2 and any other information that the maker of the report believes might be
3 helpful in establishing the cause of the injuries and the identity of the
4 persons responsible for the injuries.

5 (b) Any other person who has reason to suspect that a child has been
6 injured as a result of physical, mental or emotional abuse or neglect or
7 sexual abuse may report the matter as provided in subsection (c) or (e).

8 (c) Except as provided by subsection (e), reports made pursuant to
9 this section shall be made to the state department of social and rehabil-
10 itation services. When the department is not open for business, the re-
11 ports shall be made to the appropriate law enforcement agency. On the
12 next day that the state department of social and rehabilitation services is
13 open for business, the law enforcement agency shall report to the de-
14 partment any report received and any investigation initiated pursuant to
15 subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports
16 may be made orally or, on request of the department, in writing.

17 (d) Any person who is required by this section to report an injury to
18 a child and who knows of the death of a child shall notify immediately
19 the coroner as provided by K.S.A. 22a-242, and amendments thereto.

20 (e) Reports of child abuse or neglect occurring in an institution op-
21 erated by the secretary of social and rehabilitation services or the com-
22 missioner of juvenile justice shall be made to the attorney general. All
23 other reports of child abuse or neglect by persons employed by or of
24 children of persons employed by the state department of social and re-
25 habilitation services or the juvenile justice authority shall be made to the
26 appropriate law enforcement agency.

27 (f) Willful and knowing failure to make a report required by this sec-
28 tion is a class B misdemeanor.

29 (g) Preventing or interfering with, with the intent to prevent, the
30 making of a report required by this section is a class B misdemeanor.

31 (h) *Willfully and knowingly making a false report pursuant to this*
32 *section or making a report that the person knows lacks factual foundation*
33 *is a class B misdemeanor.*

34 (i) *If a court determines that an accusation of child abuse or neglect*
35 *made during a child custody proceeding is false and the person making*
36 *the accusation knew it to be false at the time the accusation was made,*
37 *the court may impose a fine, not to exceed \$5,000 and reasonable attorney*
38 *fees incurred in recovering the sanctions, against the person making the*
39 *accusation. The remedy provided by this subsection is in addition to any*
40 *other remedy provided by law.*

41 Sec. 2. K.S.A. 38-1541 is hereby amended to read as follows: 38-
42 1541. (a) Upon motion of any person with whom the child has been
43 residing or who is within the fourth degree of relationship to the child

1 and who desires to have standing to participate in the proceedings re-
2 garding the child, the court may order that the person may participate in
3 the proceedings. Upon the filing of the motion, the court may send to
4 the department of social and rehabilitation services a copy of the motion.
5 Upon its receipt, the department shall make an investigation of the ad-
6 visability of the matter and report its findings and recommendations to
7 the court. In determining whether to enter the order, the court shall take
8 into consideration the length of time the child has resided with the per-
9 son, the nature of the custody, the relationship between the child and the
10 person and the degree to which the person has been standing in the place
11 of or assumed the obligations of the child's parent. The status as an in-
12 terested party granted pursuant to this ~~section~~ subsection may be termi-
13 nated at any time by order of the court.

14 (b) *Upon motion of a foster parent, the court shall order that the foster*
15 *parent may participate in the proceedings as an interested party unless*
16 *the court determines, on the record, it is not in the best interest of the*
17 *child to have such foster parent be an interested party.*

18 Sec. 3. K.S.A. 38-1563 is hereby amended to read as follows: 38-
19 1563. (a) After consideration of any evidence offered relating to disposi-
20 tion, the court may retain jurisdiction and place the child in the custody
21 of the child's parent subject to terms and conditions which the court
22 prescribes to assure the proper care and protection of the child, including
23 supervision of the child and the parent by a court services officer, or may
24 order the child and the parent to participate in programs operated by the
25 secretary or another appropriate individual or agency. The terms and
26 conditions may require any special treatment or care which the child
27 needs for the child's physical, mental or emotional health.

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

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

40 (d) If the court finds that placing the child in the custody of a parent
41 will not assure protection from physical, mental or emotional abuse or
42 neglect or sexual abuse or is contrary to the welfare of the child or that
43 placement would be in the best interests of the child, the court shall enter

1 an order awarding custody of the child, until the further order of the
2 court, to one of the following:

- 3 (1) A relative of the child or a person with whom the child has close
4 emotional ties;
5 (2) any other suitable person;
6 (3) a shelter facility; or
7 (4) the secretary.

8 If the child is adjudged to be a child in need of care, the court shall
9 not place the child in the custody of the secretary if the court has received
10 from the secretary, written documentation of the services and/or com-
11 munity services plan offered or delivered to prevent the need for such
12 custody unless the court finds that the services documented by the sec-
13 retary are insufficient to protect the safety of the child and that being in
14 the custody of the parent with such services in place is contrary to the
15 welfare or that placement is in the best interests of the child. The court
16 shall have the authority to require any person or entity agreeing to par-
17 ticipate in the plan to perform as set out in the plan. The secretary shall
18 present to the court in writing the specific actions taken to maintain the
19 family unit and prevent the unnecessary removal of the child from the
20 child's home.

21 In making such a custody order, the court shall give preference, to the
22 extent that the court finds it is in the best interests of the child, first to
23 granting custody to a relative of the child and second to granting custody
24 of the child to a person with whom the child has close emotional ties. If
25 the court has awarded legal custody based on the finding specified by this
26 subsection, the legal custodian shall not return the child to the home of
27 that parent without the written consent of the court.

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

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

31 (2) The secretary shall notify the court in writing of any placement
32 of the child or, within 10 days of the order awarding the custody of the
33 child to the secretary, any proposed placement of the child, whichever
34 occurs first.

35 (3) The court ~~may~~ shall determine if such placement is contrary to
36 the welfare or in the best interests of the child, and if the court determines
37 that such placement is not in the best interests of the child, the court
38 shall notify the secretary who shall then make an alternative placement
39 subject to the procedures established in this paragraph. *The court shall*
40 *have final approval of any placement when the custody of the child is*
41 *awarded to the secretary.* In determining if such placement is in the best
42 interests of the child, the court, after providing the parties with an op-
43 portunity to be heard, shall consider the health and safety needs of the

1 child and the resources available to meet the needs of children in the
2 custody of the secretary.

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

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

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

19 (h) The court shall not enter an order removing a child from the
20 custody of a parent pursuant to this section unless the court first finds
21 from evidence presented by the petitioner that reasonable efforts have
22 been made to maintain the family unit and prevent the unnecessary re-
23 moval of the child from the child's home or that reasonable efforts are
24 not necessary because reintegration is not a viable alternative; or that an
25 emergency exists which threatens the safety of the child and that allowing
26 the child to remain in the home is contrary to the welfare of the child or
27 that placement would be in the best interest of the child. If the child is
28 placed in the custody of the secretary, the court shall provide the secretary
29 with a copy of any orders entered for the purpose of documenting these
30 orders within 10 days of making the order. Reintegration may not be a
31 viable alternative when the: (1) Parent has been found by a court to have
32 committed murder in the first degree, K.S.A. 21-3401, and amendments
33 thereto, murder in the second degree, K.S.A. 21-3402, and amendments
34 thereto, capital murder, K.S.A. 21-3439, and amendments thereto, vol-
35 untary manslaughter, K.S.A. 21-3403, and amendments thereto, or vio-
36 lated a law of another state which prohibits such murder or manslaughter
37 of a child; (2) parent aided or abetted, attempted, conspired or solicited
38 to commit such murder or voluntary manslaughter of a child as provided
39 in subsection (h)(1); (3) parent committed a felony battery that resulted
40 in bodily injury to the child or another child; (4) parent has subjected the
41 child or another child to aggravated circumstances as defined in K.S.A.
42 38-1502, and amendments thereto; (5) parental rights of the parent to
43 another child have been terminated involuntarily or (6) the child has been

1 in extended out of home placement as defined in K.S.A. 38-1502, and
2 amendments thereto. Such findings shall be included in any order entered
3 by the court.

4 (i) In addition to or in lieu of any other order authorized by this
5 section, if a child is adjudged to be a child in need of care by reason of a
6 violation of the uniform controlled substances act (K.S.A. 65-4101 *et seq.*,
7 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
8 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
9 order the child to submit to and complete an alcohol and drug evaluation
10 by a community-based alcohol and drug safety action program certified
11 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
12 to exceed the fee established by that statute for such evaluation. If the
13 court finds that the child and those legally liable for the child's support
14 are indigent, the fee may be waived. In no event shall the fee be assessed
15 against the secretary or the department of social and rehabilitation
16 services.

17 (j) In addition to any other order authorized by this section, if child
18 support has been requested and the parent or parents have a duty to
19 support the child, the court may order one or both parents to pay child
20 support and, when custody is awarded to the secretary, the court shall
21 order one or both parents to pay child support. The court shall determine,
22 for each parent separately, whether the parent is already subject to an
23 order to pay support for the child. If the parent is not presently ordered
24 to pay support for any child who is a ward of the court and the court has
25 personal jurisdiction over the parent, the court shall order the parent to
26 pay child support in an amount determined under K.S.A. 38-1595, and
27 amendments thereto. Except for good cause shown, the court shall issue
28 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
29 *seq.*, and amendments thereto, for each parent ordered to pay support
30 under this subsection, regardless of whether a payor has been identified
31 for the parent. A parent ordered to pay child support under this subsec-
32 tion shall be notified, at the hearing or otherwise, that the child support
33 order may be registered pursuant to K.S.A. 38-1597, and amendments
34 thereto. The parent shall also be informed that, after registration, the
35 income withholding order may be served on the parent's employer with-
36 out further notice to the parent and the child support order may be en-
37 forced by any method allowed by law. Failure to provide this notice shall
38 not affect the validity of the child support order.

39 Sec. 4. K.S.A. 38-1541 and 38-1563 and K.S.A. 2004 Supp. 38-1522
40 are hereby repealed.

41 Sec. 5. This act shall take effect and be in force from and after its
42 publication in the statute book.