

HOUSE BILL No. 2650

By Representatives Kiegerl, Brown, Huy, McCreary, F. Miller, Judy Morrison, Oharah, Pilcher-Cook and Ruff

1-18

10 AN ACT concerning children in need of care; foster parents as interested
11 parties; custody awarded to the secretary; false reporting of abuse;
12 temporary custody; immediate physical danger; amending K.S.A. 38-
13 1541, 38-1543, 38-1563 and 38-1567 and K.S.A. 2005 Supp. 38-1522
14 and repealing the existing sections.
15

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

17 Section 1. K.S.A. 2005 Supp. 38-1522 is hereby amended to read as
18 follows: 38-1522. (a) When any of the following persons has reason to
19 suspect that a child has been injured as a result of physical, mental or
20 emotional abuse or neglect or sexual abuse, the person shall report the
21 matter promptly as provided in subsection (c) or (e): Persons licensed to
22 practice the healing arts or dentistry; persons licensed to practice optom-
23 etry; persons engaged in postgraduate training programs approved by the
24 state board of healing arts; licensed psychologists; licensed masters level
25 psychologists; licensed clinical psychotherapists; licensed professional or
26 practical nurses examining, attending or treating a child under the age of
27 18; teachers, school administrators or other employees of a school which
28 the child is attending; chief administrative officers of medical care facil-
29 ities; licensed marriage and family therapists; licensed clinical marriage
30 and family therapists; licensed professional counselors; licensed clinical
31 professional counselors; registered alcohol and drug abuse counselors;
32 persons licensed by the secretary of health and environment to provide
33 child care services or the employees of persons so licensed at the place
34 where the child care services are being provided to the child; licensed
35 social workers; firefighters; emergency medical services personnel; me-
36 diators appointed under K.S.A. 23-602 and amendments thereto; juvenile
37 intake and assessment workers; and law enforcement officers. The report
38 may be made orally and shall be followed by a written report if requested.
39 When the suspicion is the result of medical examination or treatment of
40 a child by a member of the staff of a medical care facility or similar
41 institution, that staff member shall immediately notify the superinten-
42 dent, manager or other person in charge of the institution who shall make
43 a written report forthwith. Every written report shall contain, if known,

1 the names and addresses of the child and the child's parents or other
2 persons responsible for the child's care, the child's age, the nature and
3 extent of the child's injury (including any evidence of previous injuries)
4 and any other information that the maker of the report believes might be
5 helpful in establishing the cause of the injuries and the identity of the
6 persons responsible for the injuries.

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

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

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

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

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

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

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

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

43 Sec. 2. K.S.A. 38-1541 is hereby amended to read as follows: 38-

1 1541. (a) Upon motion of any person with whom the child has been
 2 residing or who is within the fourth degree of relationship to the child
 3 and who desires to have standing to participate in the proceedings re-
 4 garding the child, the court may order that the person may participate in
 5 the proceedings. Upon the filing of the motion, the court may send to
 6 the department of social and rehabilitation services a copy of the motion.
 7 Upon its receipt, the department shall make an investigation of the ad-
 8 visability of the matter and report its findings and recommendations to
 9 the court. In determining whether to enter the order, the court shall take
 10 into consideration the length of time the child has resided with the per-
 11 son, the nature of the custody, the relationship between the child and the
 12 person and the degree to which the person has been standing in the place
 13 of or assumed the obligations of the child's parent. The status as an in-
 14 terested party granted pursuant to this ~~section~~ subsection may be termi-
 15 nated at any time by order of the court.

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

20 Sec. 3. K.S.A. 38-1543 is hereby amended to read as follows: 38-
 21 1543. (a) Upon notice and hearing, the court may issue an order directing
 22 who shall have temporary custody and may modify the order during the
 23 pendency of the proceedings as will best serve the child's welfare.

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

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

31 (Name of Court)
 32 (Caption of Case)
 33 NOTICE OF TEMPORARY CUSTODY HEARING
 34 TO:
 35 (Names) (Relationship) (Addresses)
 36 _____
 37 _____
 38 _____
 39 On _____, _____, (year), at ___ o'clock ___m.
 40 (day) (date)

41 the court will conduct a hearing at _____ to determine if the above named child
 42 or children should be in the temporary custody of some person or agency other than the
 43 parent or other person having legal custody prior to the hearing on the petition filed in the

1 above captioned case. The court may order one or both parents to pay child support.
 2 _____, an attorney, has been appointed as guardian *ad litem* for the child or
 3 children. Each parent or other legal custodian has the right to appear and be heard person-
 4 ally, either with or without an attorney. An attorney will be appointed for a parent who can
 5 show that the parent is not financially able to hire one.

6 Date _____ (year) Clerk of the District Court
 7 by _____
 8 (Seal)

9 REPORT OF SERVICE

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

12 Name	13 Location of Service (other than above)	14 Manner of Service	15 Date	16 Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

17 Date Returned _____, ____ (year)
 18 _____
 19 (Signature)
 20 _____
 21 (Title)

22 (d) Notice of the temporary custody hearing shall be given at least
 23 24 hours prior to the hearing. The court may continue the hearing to
 24 afford the 24 hours prior notice or, with the consent of the party, proceed
 25 with the hearing at the designated time. If an order of temporary custody
 26 is entered and the parent or other person having custody of the child has
 27 not been notified of the hearing, did not appear or waive appearance and
 28 requests a rehearing, the court shall rehear the matter without unnec-
 29 essary delay.

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

34 (Name of Court)
 35 (Caption of Case)

36 CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

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

40 Name	41 Relationship	42 Date	43 Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- 1 _____
- 2 I advised each of the above persons that:
- 3 (1) The hearing is to determine if the above child or children should be in the temporary
- 4 custody of a person or agency other than a parent;
- 5 (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or
- 6 children named above;
- 7 (3) each parent or legal custodian has the right to appear and be heard personally either
- 8 with or without an attorney;
- 9 (4) an attorney will be appointed for a parent who can show that the parent is not
- 10 financially able to hire an attorney; and
- 11 (5) the court may order one or both parents to pay child support.

12 _____

13 (Signature)

14 _____

15 (Name Printed)

16 _____

17 (Title)

18 (f) The court may enter an order of temporary custody after deter-

19 mining that: (1) The child is dangerous to self or to others; (2) the child

20 is not likely to be available within the jurisdiction of the court for future

21 proceedings; or (3) the health or welfare of the child may be endangered

22 without further care.

23 (g) Whenever the court determines the necessity for an order of tem-

24 porary custody the court may place the child in the temporary custody

25 of: (1) A parent or other person having custody of the child and may enter

26 a restraining order pursuant to subsection (h); (2) a person, other than

27 the parent or other person having custody, who shall not be required to

28 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-

29 tated; (3) a youth residential facility; or (4) the secretary if the child is

30 alleged to be a child in need of care, the court may award custody to the

31 secretary. However, if the secretary presents the court with a plan to

32 provide services to a child or family which the court finds will assure the

33 safety of the child, the court may only place the child in the temporary

34 custody of the secretary until the court finds the services are in place.

35 The court shall have the authority to require any person or entity agreeing

36 to participate in the plan to perform as set out in the plan. When the

37 child is placed in the temporary custody of the secretary, the secretary

38 shall have the discretionary authority to place the child with a parent or

39 to make other suitable placement for the child. When circumstances re-

40 quire, a child may be placed in a juvenile detention facility or other secure

41 facility, but the total amount of time that the child may be held in such

42 facility under this section and K.S.A. 38-1542 and amendments thereto

43 shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-

1 days. *Except as provided further*, the order of temporary custody shall
2 remain in effect until modified or rescinded by the court or a disposition
3 order is entered but not exceeding 60 days, unless good cause is shown
4 and stated on the record. *If a child has been placed with a person other*
5 *than the parent, the order of temporary custody shall remain in effect*
6 *until rescinded by the court or a disposition order is entered but not*
7 *exceeding 30 days.*

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

13 (i) The court shall not enter an order removing a child from the cus-
14 tody of a parent pursuant to this section unless the court first finds from
15 evidence presented by the petitioner that reasonable efforts have been
16 made to maintain the family unit and prevent the unnecessary removal
17 of the child from the child's home or that an emergency exists which
18 threatens the safety of the child and that remaining in the home is con-
19 trary to the welfare of the child or that placement is in the best interest
20 of the child. Such findings shall be included in any order entered by the
21 court. If the child is placed in the custody of the secretary, the court shall
22 provide the secretary with a written copy of any orders entered for the
23 purpose of documenting these orders upon making the order.

24 Sec. 4. K.S.A. 38-1563 is hereby amended to read as follows: 38-
25 1563. (a) After consideration of any evidence offered relating to disposi-
26 tion, the court may retain jurisdiction and place the child in the custody
27 of the child's parent subject to terms and conditions which the court
28 prescribes to assure the proper care and protection of the child, including
29 supervision of the child and the parent by a court services officer, or may
30 order the child and the parent to participate in programs operated by the
31 secretary or another appropriate individual or agency. The terms and
32 conditions may require any special treatment or care which the child
33 needs for the child's physical, mental or emotional health.

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

39 (c) The court may order the child and the parents of any child who
40 has been adjudged a child in need of care to attend counseling sessions
41 as the court directs. The expense of the counseling may be assessed as
42 an expense in the case. No mental health center shall charge a greater
43 fee for court-ordered counseling than the center would have charged to

1 the person receiving counseling if the person had requested counseling
2 on the person's own initiative.

3 (d) If the court finds that placing the child in the custody of a parent
4 will not assure protection from physical, mental or emotional abuse or
5 neglect or sexual abuse or is contrary to the welfare of the child or that
6 placement would be in the best interests of the child, the court shall enter
7 an order awarding custody of the child, until the further order of the
8 court, to one of the following:

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

11 (2) any other suitable person;

12 (3) a shelter facility; or

13 (4) the secretary.

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

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

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

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

37 (2) The secretary shall notify the court in writing of any placement
38 of the child or, within 10 days of the order awarding the custody of the
39 child to the secretary, any proposed placement of the child, whichever
40 occurs first.

41 (3) The court ~~may~~ shall determine if such placement is contrary to
42 the welfare or in the best interests of the child, and if the court determines
43 that such placement is not in the best interests of the child, the court

1 shall notify the secretary who shall then make an alternative placement
2 subject to the procedures established in this paragraph. *The court shall*
3 *have final approval of any placement when the custody of the child is*
4 *awarded to the secretary.* In determining if such placement is in the best
5 interests of the child, the court, after providing the parties with an op-
6 portunity to be heard, shall consider the health and safety needs of the
7 child and the resources available to meet the needs of children in the
8 custody of the secretary.

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

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

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

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

1 to commit such murder or voluntary manslaughter of a child as provided
2 in subsection (h)(1); (3) parent committed a felony battery that resulted
3 in bodily injury to the child or another child; (4) parent has subjected the
4 child or another child to aggravated circumstances as defined in K.S.A.
5 38-1502, and amendments thereto; (5) parental rights of the parent to
6 another child have been terminated involuntarily or (6) the child has been
7 in extended out of home placement as defined in K.S.A. 38-1502, and
8 amendments thereto. Such findings shall be included in any order entered
9 by the court.

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

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

1 not affect the validity of the child support order.

2 Sec. 5. K.S.A. 38-1567 is hereby amended to read as follows: 38-
3 1567. When ~~an emergency~~ *immediate physical danger* exists requiring
4 immediate action to assure the safety and protection of the child or the
5 secretary is notified that the foster parents or shelter facility refuse to
6 allow the child to remain, the secretary may transfer the child to another
7 foster home or shelter facility without prior court approval, but the sec-
8 retary shall notify the court of the action ~~at the earliest practical time~~
9 *within 72 hours of such transfer*. When the child is removed from the
10 home of a parent after having been placed in the home or facility for a
11 period of six months or longer, the secretary shall present to the court in
12 writing the specific nature of the ~~emergency~~ *immediate physical danger*
13 and request a finding by the court whether remaining in the home was
14 contrary to the welfare or not in the best interests of the child. In making
15 the finding, the court may rely on documentation submitted by the sec-
16 retary or may set the date for a hearing on the matter. If the secretary
17 requests such a finding, the court shall provide the secretary with a writ-
18 ten copy of the finding by the court not more than 45 days from the date
19 of the request.

20 Sec. 6. K.S.A. 38-1541, 38-1543, 38-1563 and 38-1567 and K.S.A.
21 2005 Supp. 38-1522 are hereby repealed.

22 Sec. 7. This act shall take effect and be in force from and after its
23 publication in the statute book.