

## HOUSE BILL No. 2511

By Committee on Federal and State Affairs

1-21

---

9 AN ACT concerning children in need of care; relating to reimbursement  
10 of costs of care for child in a grandparent's custody; amending K.S.A.  
11 2009 Supp. 38-2255 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 2009 Supp. 38-2255 is hereby amended to read as  
15 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-  
16 position, the court shall give consideration to:

- 17 (1) The child's physical, mental and emotional condition;
- 18 (2) the child's need for assistance;
- 19 (3) the manner in which the parent participated in the abuse, neglect  
20 or abandonment of the child;
- 21 (4) any relevant information from the intake and assessment process;
- 22 and
- 23 (5) the evidence received at the dispositional hearing.

24 (b) *Placement with a parent*. The court may place the child in the  
25 custody of either of the child's parents subject to terms and conditions  
26 which the court prescribes to assure the proper care and protection of  
27 the child, including, but not limited to:

- 28 (1) Supervision of the child and the parent by a court services officer;
- 29 (2) participation by the child and the parent in available programs  
30 operated by an appropriate individual or agency; and
- 31 (3) any special treatment or care which the child needs for the child's  
32 physical, mental or emotional health and safety.

33 (c) *Removal of a child from custody of a parent*. The court shall not  
34 enter an order removing a child from the custody of a parent pursuant  
35 to this section unless the court first finds probable cause that: (1)(A) The  
36 child is likely to sustain harm if not immediately removed from the home;

37 (B) allowing the child to remain in home is contrary to the welfare  
38 of the child; or

39 (C) immediate placement of the child is in the best interest of the  
40 child; and  
41 (2) reasonable efforts have been made to maintain the family unit  
42 and prevent the unnecessary removal of the child from the child's home  
43 or that an emergency exists which threatens the safety to the child.

1 (d) *Custody of a child removed from the custody of a parent.* If the  
2 court has made the findings required by subsection (c), the court shall  
3 enter an order awarding custody to a relative of the child or to a person  
4 with whom the child has close emotional ties, to any other suitable person,  
5 to a shelter facility, to a youth residential facility or, if the child is 15 years  
6 of age or younger, or 16 or 17 years of age if the child has no identifiable  
7 parental or family resources or shows signs of physical, mental, emotional  
8 or sexual abuse, to the secretary. *When the child is placed in the custody*  
9 *of the child's grandparent, the secretary shall have the power and au-*  
10 *thority to provide a sufficient amount of reimbursement to the grandpar-*  
11 *ent for the costs of the care of such child after considering the grandpar-*  
12 *ent's resources available to meet the needs of the child, except that the*  
13 *amount of reimbursement shall not exceed the maximum reimbursement*  
14 *rate that foster care parents receive for the care of the child under similar*  
15 *circumstances.* Custody awarded under this subsection shall continue un-  
16 til further order of the court.

17 (1) When custody is awarded to the secretary, the secretary shall con-  
18 sider any placement recommendation by the court and notify the court  
19 of the placement or proposed placement of the child within 10 days of  
20 the order awarding custody.

21 (A) After providing the parties or interested parties notice and op-  
22 portunity to be heard, the court may determine whether the secretary's  
23 placement or proposed placement is contrary to the welfare or in the best  
24 interests of the child. In making that determination the court shall con-  
25 sider the health and safety needs of the child and the resources available  
26 to meet the needs of children in the custody of the secretary. If the court  
27 determines that the placement or proposed placement is contrary to the  
28 welfare or not in the best interests of the child, the court shall notify the  
29 secretary, who shall then make an alternative placement.

30 (B) The secretary may propose and the court may order the child to  
31 be placed in the custody of a parent or parents if the secretary has pro-  
32 vided and the court has approved an appropriate safety action plan which  
33 includes services to be provided. The court may order the parent or par-  
34 ents and the child to perform tasks as set out in the safety action plan.

35 (2) The custodian designated under this subsection shall notify the  
36 court in writing at least 10 days prior to any planned placement with a  
37 parent. The written notice shall state the basis for the custodian's belief  
38 that placement with a parent is no longer contrary to the welfare or best  
39 interest of the child. Upon reviewing the notice, the court may allow the  
40 custodian to proceed with the planned placement or may set the date for  
41 a hearing to determine if the child shall be allowed to return home. If  
42 the court sets a hearing on the matter, the custodian shall not return the  
43 child home without written consent of the court.

- 1       (3) The court may grant any person reasonable rights to visit the child  
2 upon motion of the person and a finding that the visitation rights would  
3 be in the best interests of the child.
- 4       (4) The court may enter an order restraining any alleged perpetrator  
5 of physical, mental or emotional abuse or sexual abuse of the child from  
6 residing in the child's home; visiting, contacting, harassing or intimidating  
7 the child, other family member or witness; or attempting to visit, contact,  
8 harass or intimidate the child, other family member or witness. Such  
9 restraining order shall be served by personal service pursuant to subsec-  
10 tion (a) of K.S.A. 2009 Supp. 38-2237, and amendments thereto, on any  
11 alleged perpetrator to whom the order is directed.
- 12       (5) The court shall provide a copy of any orders entered within 10  
13 days of entering the order to the custodian designated under this  
14 subsection.
- 15       (e) *Further determinations regarding a child removed from the home.*  
16 If custody has been awarded under subsection (d) to a person other than  
17 a parent, a permanency plan shall be provided or prepared pursuant to  
18 K.S.A. 2009 Supp. 38-2264, and amendments thereto. If a permanency  
19 plan is provided at the dispositional hearing, the court may determine  
20 whether reintegration is a viable alternative or, if reintegration is not a  
21 viable alternative, whether the child should be placed for adoption or a  
22 permanent custodian appointed. In determining whether reintegration is  
23 a viable alternative, the court shall consider:
- 24       (1) Whether a parent has been found by a court to have committed  
25 one of the following crimes or to have violated the law of another state  
26 prohibiting such crimes or to have aided and abetted, attempted, con-  
27 spired or solicited the commission of one of these crimes: Murder in the  
28 first degree, K.S.A. 21-3401, and amendments thereto, murder in the  
29 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,  
30 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.  
31 21-3403, and amendments thereto, or a felony battery that resulted in  
32 bodily injury;
- 33       (2) whether a parent has subjected the child or another child to ag-  
34 gravated circumstances;
- 35       (3) whether a parent has previously been found to be an unfit parent  
36 in proceedings under this code or in comparable proceedings under the  
37 laws of another state or the federal government;
- 38       (4) whether the child has been in extended out of home placement;
- 39       (5) whether the parents have failed to work diligently toward  
40 reintegration;
- 41       (6) whether the secretary has provided the family with services nec-  
42 essary for the safe return of the child to the home; and
- 43       (7) whether it is reasonable to expect reintegration to occur within a

1 time frame consistent with the child's developmental needs.

2 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
3 determines that reintegration is not a viable alternative, proceedings to  
4 terminate parental rights and permit placement of the child for adoption  
5 or appointment of a permanent custodian shall be initiated unless the  
6 court finds that compelling reasons have been documented in the case  
7 plan why adoption or appointment of a permanent custodian would not  
8 be in the best interests of the child. If compelling reasons have not been  
9 documented, the county or district attorney shall file a motion within 30  
10 days to terminate parental rights or a motion to appoint a permanent  
11 custodian within 30 days and the court shall hold a hearing on the motion  
12 within 90 days of its filing. No hearing is required when the parents  
13 voluntarily relinquish parental rights or consent to the appointment of a  
14 permanent custodian.

15 (g) *Additional Orders.* In addition to or in lieu of any other order  
16 authorized by this section:

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

24 (2) If the court has reason to believe that a child is before the court  
25 due, in whole or in part, to the use or misuse of alcohol or a violation of  
26 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto,  
27 by the child, a parent of the child, or another person responsible for the  
28 care of the child, the court may order the child, parent of the child or  
29 other person responsible for the care of the child to submit to and com-  
30 plete an alcohol and drug evaluation by a qualified person or agency and  
31 comply with any recommendations. If the evaluation is performed by a  
32 community-based alcohol and drug safety program certified pursuant to  
33 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or  
34 other person responsible for the care of the child shall pay a fee not to  
35 exceed the fee established by that statute. If the court finds that the child  
36 and those legally liable for the child's support are indigent, the fee may  
37 be waived. In no event shall the fee be assessed against the secretary.

38 (3) If child support has been requested and the parent or parents  
39 have a duty to support the child, the court may order one or both parents  
40 to pay child support and, when custody is awarded to the secretary, the  
41 court shall order one or both parents to pay child support. The court shall  
42 determine, for each parent separately, whether the parent is already sub-  
43 ject to an order to pay support for the child. If the parent is not presently

1 ordered to pay support for any child who is subject to the jurisdiction of  
2 the court and the court has personal jurisdiction over the parent, the court  
3 shall order the parent to pay child support in an amount determined  
4 under K.S.A. 2009 Supp. 38-2277, and amendments thereto. Except for  
5 good cause shown, the court shall issue an immediate income withholding  
6 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for  
7 each parent ordered to pay support under this subsection, regardless of  
8 whether a payor has been identified for the parent. A parent ordered to  
9 pay child support under this subsection shall be notified, at the hearing  
10 or otherwise, that the child support order may be registered pursuant to  
11 K.S.A. 2009 Supp. 38-2279, and amendments thereto. The parent shall  
12 also be informed that, after registration, the income withholding order  
13 may be served on the parent's employer without further notice to the  
14 parent and the child support order may be enforced by any method al-  
15 lowed by law. Failure to provide this notice shall not affect the validity of  
16 the child support order.

17 Sec. 2. K.S.A. 2009 Supp. 38-2255 is hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after its  
19 publication in the statute book.