

## HOUSE BILL No. 2512

By Committee on Federal and State Affairs

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9 AN ACT concerning children in need of care; relating to powers of the  
10 court; amending K.S.A. 75-3330 and K.S.A. 2009 Supp. 38-2242, 38-  
11 2243, 38-2252, 38-2255, 38-2258, 38-2259, 38-2263, 38-2264 and 38-  
12 2270 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 2009 Supp. 38-2242 is hereby amended to read as  
16 follows: 38-2242. (a) The court, upon verified application, may issue ex  
17 parte an order directing that a child be held in protective custody and, if  
18 the child has not been taken into custody, an order directing that the  
19 child be taken into custody. The application shall state for each child:

- 20 (1) The applicant's belief that the child is a child in need of care;  
21 (2) that the child is likely to sustain harm if not immediately removed  
22 from the home;  
23 (3) that allowing the child to remain in the home is contrary to the  
24 welfare of the child; and  
25 (4) the facts relied upon to support the application, including efforts  
26 known to the applicant to maintain the family unit and prevent the un-  
27 necessary removal of the child from the child's home, or the specific facts  
28 supporting that an emergency exists which threatens the safety of the  
29 child.

30 (b) (1) The order of protective custody may be issued only after the  
31 court has determined there is probable cause to believe the allegations  
32 in the application are true. The order shall remain in effect until the  
33 temporary custody hearing provided for in K.S.A. 2009 Supp. 38-2243,  
34 and amendments thereto, unless earlier rescinded by the court.

35 (2) No child shall be held in protective custody for more than 72  
36 hours, excluding Saturdays, Sundays and legal holidays, unless within the  
37 72-hour period a determination is made as to the necessity for temporary  
38 custody in a temporary custody hearing. The time spent in custody pur-  
39 suant to K.S.A. 2009 Supp. 38-2232, and amendments thereto, shall be  
40 included in calculating the 72-hour period. Nothing in this subsection  
41 shall be construed to mean that the child must remain in protective cus-  
42 tody for 72 hours. If a child is in the protective custody of the secretary,  
43 the secretary shall allow at least one supervised visit between the child

1 and the parent or parents within such time period as the child is in pro-  
2 tective custody. The court may prohibit such supervised visit if the court  
3 determines it is not in the best interest of the child.

4 (c) (1) Whenever the court determines the necessity for an order of  
5 protective custody, the court may place the child in the protective custody  
6 of:

7 (A) A parent or other person having custody of the child and may  
8 enter a restraining order pursuant to subsection (e);

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

12 (C) a youth residential facility;

13 (D) a shelter facility; or

14 (E) the secretary, if the child is 15 years of age or younger, or 16 or  
15 17 years of age if the child has no identifiable parental or family resources  
16 or shows signs of physical, mental, emotional or sexual abuse.

17 (2) If the secretary presents the court with a plan to provide services  
18 to a child or family which the court finds will assure the safety of the  
19 child, the court may only place the child in the protective custody of the  
20 secretary until the court finds the services are in place. The court shall  
21 have the authority to require any person or entity agreeing to participate  
22 in the plan to perform as set out in the plan. When the child is placed in  
23 the protective custody of the secretary, the secretary shall ~~have the dis-~~  
24 ~~cretionary authority to place the child with a parent or to make other~~  
25 ~~suitable placement for~~ *present to the court the secretary's recommenda-*  
26 *tion for placement of the child. The court shall consider the secretary's*  
27 *placement recommendation in ordering temporary placement of the child.*  
28 *If the court does not place the child according to the secretary's placement*  
29 *recommendation, the reasons for denying such placement shall be set forth*  
30 *in the court's order.* When the child is presently alleged, but not yet  
31 adjudicated, to be a child in need of care solely pursuant to subsection  
32 (d)(9) or (d)(10) of K.S.A. 2009 Supp. 38-2202, and amendments thereto,  
33 the child may be placed in a juvenile detention facility or other secure  
34 facility pursuant to an order of protective custody for a period of not to  
35 exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

36 (d) The order of protective custody shall be served pursuant to sub-  
37 section (a) of K.S.A. 2009 Supp. 38-2237, and amendments thereto, on  
38 the child's parents and any other person having legal custody of the child.  
39 The order shall prohibit the removal of the child from the court's juris-  
40 diction without the court's permission.

41 (e) If the court issues an order of protective custody, the court may  
42 also enter an order restraining any alleged perpetrator of physical, sexual,  
43 mental or emotional abuse of the child from residing in the child's home;

1 visiting, contacting, harassing or intimidating the child, other family mem-  
2 ber or witness; or attempting to visit, contact, harass or intimidate the  
3 child, other family member or witness. Such restraining order shall be  
4 served by personal service pursuant to subsection (a) of K.S.A. 2009 Supp.  
5 38-2237, and amendments thereto, on any alleged perpetrator to whom  
6 the order is directed.

7 (f) (1) The court shall not enter an order removing a child from the  
8 custody of a parent pursuant to this section unless the court first finds  
9 probable cause that: (A)(i) The child is likely to sustain harm if not im-  
10 mediately removed from the home;

11 (ii) allowing the child to remain in home is contrary to the welfare of  
12 the child; or

13 (iii) immediate placement of the child is in the best interest of the  
14 child; and

15 (B) reasonable efforts have been made to maintain the family unit  
16 and prevent the unnecessary removal of the child from the child's home  
17 or that an emergency exists which threatens the safety to the child.

18 (2) Such findings shall be included in any order entered by the court.  
19 If the child is placed in the custody of the secretary, the court shall provide  
20 the secretary with a written copy of any orders entered upon making the  
21 order.

22 (g) *The court, in issuing an order under this section, may also set*  
23 *forth where the child shall not be placed.*

24 Sec. 2. K.S.A. 2009 Supp. 38-2243 is hereby amended to read as  
25 follows: 38-2243. (a) Upon notice and hearing, the court may issue an  
26 order directing who shall have temporary custody and may modify the  
27 order during the pendency of the proceedings as will best serve the child's  
28 welfare.

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

32 (c) Whenever it is determined that a temporary custody hearing is  
33 required, the court shall immediately set the time and place for the hear-  
34 ing. Notice of a temporary custody hearing shall be given to all parties  
35 and interested parties.

36 (d) Notice of the temporary custody hearing shall be given at least  
37 24 hours prior to the hearing. The court may continue the hearing to  
38 afford the 24 hours prior notice or, with the consent of the party or  
39 interested party, proceed with the hearing at the designated time. If an  
40 order of temporary custody is entered and the parent or other person  
41 having custody of the child has not been notified of the hearing, did not  
42 appear or waive appearance and requests a rehearing, the court shall  
43 rehear the matter without unnecessary delay.

- 1 (e) Oral notice may be used for giving notice of a temporary custody  
2 hearing where there is insufficient time to give written notice. Oral notice  
3 is completed upon filing a certificate of oral notice.
- 4 (f) The court may enter an order of temporary custody after deter-  
5 mining there is probable cause to believe that the: (1) Child is dangerous  
6 to self or to others; (2) child is not likely to be available within the juris-  
7 diction of the court for future proceedings; or (3) health or welfare of the  
8 child may be endangered without further care.
- 9 (g) (1) Whenever the court determines the necessity for an order of  
10 temporary custody the court may place the child in the temporary custody  
11 of:
- 12 (A) A parent or other person having custody of the child and may  
13 enter a restraining order pursuant to subsection (h);
  - 14 (B) a person, other than the parent or other person having custody,  
15 who shall not be required to be licensed under article 5 of chapter 65 of  
16 the Kansas Statutes Annotated, and amendments thereto;
  - 17 (C) a youth residential facility;
  - 18 (D) a shelter facility; or
  - 19 (E) the secretary, if the child is 15 years of age or younger, or 16 or  
20 17 years of age if the child has no identifiable parental or family resources  
21 or shows signs of physical, mental, emotional or sexual abuse.
- 22 (2) If the secretary presents the court with a plan to provide services  
23 to a child or family which the court finds will assure the safety of the  
24 child, the court may only place the child in the temporary custody of the  
25 secretary until the court finds the services are in place. The court shall  
26 have the authority to require any person or entity agreeing to participate  
27 in the plan to perform as set out in the plan. When the child is placed in  
28 the temporary custody of the secretary, the secretary shall ~~have the dis-~~  
29 ~~cretionary authority to place the child with a parent or to make other~~  
30 ~~suitable placement for~~ *present to the court the secretary's recommenda-*  
31 *tion for placement of the child. The court shall consider the secretary's*  
32 *placement recommendation in ordering temporary placement of the child.*  
33 *If the court does not place the child according to the secretary's placement*  
34 *recommendation, the reasons for denying such placement shall be set forth*  
35 *in the court's order. The court may also order where the child may not*  
36 *be placed.* When the child is presently alleged, but not yet adjudicated to  
37 be a child in need of care solely pursuant to subsection (d)(9) or (d)(10)  
38 of K.S.A. 2009 Supp. 38-2202, and amendments thereto, the child may  
39 be placed in a juvenile detention facility or other secure facility, but the  
40 total amount of time that the child may be held in such facility under this  
41 section and K.S.A. 2009 Supp. 38-2242, and amendments thereto, shall  
42 not exceed 24 hours, excluding Saturdays, Sundays and legal holidays.  
43 The order of temporary custody shall remain in effect until modified or

1 rescinded by the court or an adjudication order is entered but not ex-  
2 ceeding 60 days, unless good cause is shown and stated on the record.

3 (h) If the court issues an order of temporary custody, the court may  
4 also enter an order restraining any alleged perpetrator of physical, sexual,  
5 mental or emotional abuse of the child from residing in the child's home;  
6 visiting, contacting, harassing or intimidating the child; or attempting to  
7 visit, contact, harass or intimidate the child, other family members or  
8 witnesses. Such restraining order shall be served by personal service pur-  
9 suant to subsection (a) of K.S.A. 2009 Supp. 38-2237, and amendments  
10 thereto, on any alleged perpetrator to whom the order is directed.

11 (i) (1) The court shall not enter an order removing a child from the  
12 custody of a parent pursuant to this section unless the court first finds  
13 probable cause that: (A)(i) the child is likely to sustain harm if not im-  
14 mediately removed from the home;

15 (ii) allowing the child to remain in home is contrary to the welfare of  
16 the child; or

17 (iii) immediate placement of the child is in the best interest of the  
18 child; and

19 (B) reasonable efforts have been made to maintain the family unit  
20 and prevent the unnecessary removal of the child from the child's home  
21 or that an emergency exists which threatens the safety to the child.

22 (2) Such findings shall be included in any order entered by the court.  
23 If the child is placed in the custody of the secretary, upon making the  
24 order the court shall provide the secretary with a written copy.

25 (j) If the court enters an order of temporary custody that provides  
26 for placement of the child with a person other than the parent, the court  
27 shall make a child support determination pursuant to K.S.A. 2009 Supp.  
28 38-2277, and amendments thereto.

29 Sec. 3. K.S.A. 2009 Supp. 38-2252 is hereby amended to read as  
30 follows: 38-2252. (a) Before placement pursuant to this code of a child  
31 with a person other than the child's parent, the secretary, the court or  
32 the court services officer, at the direction of the court, may convene a  
33 conference of persons determined by the court, the secretary or the court  
34 services officer to have a potential interest in determining a placement  
35 which is in the best interests of the child. Such persons shall be given any  
36 information relevant to the determination of the placement of the child,  
37 including the needs of the child and any other information that would be  
38 helpful in making a placement in the best interests of the child. After  
39 presentation of the information, such persons shall be permitted to dis-  
40 cuss and recommend to the secretary or the court services officer the  
41 person or persons with whom it would be in the child's best interest to  
42 be placed. Unless the secretary or the court services officer determines  
43 that there is good cause to place the child with a person other than as

1 recommended *by the conference of persons*, the child shall be placed in  
2 accordance with the recommendations *upon order of the court*. *If the*  
3 *court does not place the child as recommended by the conference of per-*  
4 *sons the reasons for denying such placement shall be set forth in the*  
5 *court's orders.*

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

9 Sec. 4. K.S.A. 2009 Supp. 38-2255 is hereby amended to read as  
10 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-  
11 position, the court shall give consideration to:

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

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

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

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

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

34 (C) immediate placement of the child is in the best interest of the  
35 child; and

36 (2) reasonable efforts have been made to maintain the family unit  
37 and prevent the unnecessary removal of the child from the child's home  
38 or that an emergency exists which threatens the safety to the child.

39 (d) *Custody of a child removed from the custody of a parent*. If the  
40 court has made the findings required by subsection (c), the court shall  
41 ~~enter~~ *give priority to entering* an order awarding custody to a relative of  
42 the child or to a person with whom the child has close emotional ties. *If*  
43 *the court does not award custody to a relative of the child or to a person*

1 *with whom the child has close emotional ties, the court shall set out its*  
2 *reasons for not ordering such placement in the court's order. Upon the*  
3 *court's refusal to place the child with a relative or person with whom the*  
4 *child has close emotional ties, the court may award custody to any other*  
5 *suitable person, to a shelter facility, to a youth residential facility or, if*  
6 *the child is 15 years of age or younger, or 16 or 17 years of age if the*  
7 *child has no identifiable parental or family resources or shows signs of*  
8 *physical, mental, emotional or sexual abuse, to the secretary. Custody*  
9 *awarded under this subsection shall continue until further order of the*  
10 *court.*

11 (1) When custody is awarded to the secretary, the secretary shall ~~con-~~  
12 ~~sider any placement recommendation by the court and~~ notify the court  
13 of the ~~placement or~~ secretary's proposed placement of the child within  
14 10 days of the order awarding custody.

15 (A) After providing the parties or interested parties notice and op-  
16 portunity to be heard, the court ~~may~~ shall determine whether the sec-  
17 retary's placement or proposed placement is contrary to the welfare or in  
18 the best interests of the child. In making that determination the court  
19 shall consider the health and safety needs of the child and the resources  
20 available to meet the needs of children in the custody of the secretary. If  
21 the court determines that the ~~placement or~~ proposed placement is con-  
22 trary to the welfare or not in the best interests of the child, the court shall  
23 notify the secretary, ~~who~~ *of the reasons for denial of such placement. The*  
24 *secretary shall then make an alternative proposal of placement to the*  
25 *court. The court shall consider the secretary's proposed placement. If the*  
26 *court agrees with the proposed placement, the court shall issue an order*  
27 *of placement. If the court denies such placement, it shall set forth its*  
28 *reasons for doing so in the order of placement for the child.*

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

34 (C) *Placement and change of placement of a child under custody of*  
35 *the secretary shall be made upon an order of placement by the court.*

36 (2) The custodian designated under this subsection shall notify the  
37 court in writing at least 10 days prior to any planned placement with a  
38 parent. The written notice shall state the basis for the custodian's belief  
39 that placement with a parent is no longer contrary to the welfare or best  
40 interest of the child. Upon reviewing the notice, the court may allow the  
41 custodian to proceed with the planned placement or may set the date for  
42 a hearing to determine if the child shall be allowed to return home. If  
43 the court sets a hearing on the matter, the custodian shall not return the

1 child home without written consent of the court.

2 (3) The court may grant any person reasonable rights to visit the child  
3 upon motion of the person and a finding that the visitation rights would  
4 be in the best interests of the child.

5 (4) The court may enter an order restraining any alleged perpetrator  
6 of physical, mental or emotional abuse or sexual abuse of the child from  
7 residing in the child's home; visiting, contacting, harassing or intimidating  
8 the child, other family member or witness; or attempting to visit, contact,  
9 harass or intimidate the child, other family member or witness. Such  
10 restraining order shall be served by personal service pursuant to subsec-  
11 tion (a) of K.S.A. 2009 Supp. 38-2237, and amendments thereto, on any  
12 alleged perpetrator to whom the order is directed.

13 (5) The court shall provide a copy of any orders entered within 10  
14 days of entering the order to the custodian designated under this  
15 subsection.

16 (e) *Further determinations regarding a child removed from the home.*  
17 If custody has been awarded under subsection (d) to a person other than  
18 a parent, a permanency plan shall be provided or prepared pursuant to  
19 K.S.A. 2009 Supp. 38-2264, and amendments thereto. If a permanency  
20 plan is provided at the dispositional hearing, the court may determine  
21 whether reintegration is a viable alternative or, if reintegration is not a  
22 viable alternative, whether the child should be placed for adoption or a  
23 permanent custodian appointed. In determining whether reintegration is  
24 a viable alternative, the court shall consider:

25 (1) Whether a parent has been found by a court to have committed  
26 one of the following crimes or to have violated the law of another state  
27 prohibiting such crimes or to have aided and abetted, attempted, con-  
28 spired or solicited the commission of one of these crimes: Murder in the  
29 first degree, K.S.A. 21-3401, and amendments thereto, murder in the  
30 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,  
31 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.  
32 21-3403, and amendments thereto, or a felony battery that resulted in  
33 bodily injury;

34 (2) whether a parent has subjected the child or another child to ag-  
35 gravated circumstances;

36 (3) whether a parent has previously been found to be an unfit parent  
37 in proceedings under this code or in comparable proceedings under the  
38 laws of another state or the federal government;

39 (4) whether the child has been in extended out of home placement;

40 (5) whether the parents have failed to work diligently toward  
41 reintegration;

42 (6) whether the secretary has provided the family with services nec-  
43 essary for the safe return of the child to the home; and

1 (7) whether it is reasonable to expect reintegration to occur within a  
2 time frame consistent with the child's developmental needs.

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

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

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

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

39 (3) If child support has been requested and the parent or parents  
40 have a duty to support the child, the court may order one or both parents  
41 to pay child support and, when custody is awarded to the secretary, the  
42 court shall order one or both parents to pay child support. The court shall  
43 determine, for each parent separately, whether the parent is already sub-

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

18    Sec. 5. K.S.A. 2009 Supp. 38-2258 is hereby amended to read as  
19    follows: 38-2258. (a) Except as provided in K.S.A. 2009 Supp. 38-  
20    2255(d)(2) and 38-2259, and amendments thereto, if a child has been in  
21    the same foster home or shelter facility for six months or longer, or has  
22    been placed by the ~~secretary~~ *court* in the home of a parent or relative,  
23    the secretary shall give written notice of any plan to move the child to a  
24    different placement ~~unless~~ *including when* the move is to the selected  
25    preadoptive family for the purpose of facilitating adoption. The notice  
26    shall be given to: (1) The court having jurisdiction over the child; (2) each  
27    parent whose address is available; (3) the foster parent or custodian from  
28    whose home or shelter facility it is proposed to remove the child; (4) the  
29    child, if 12 or more years of age; and (5) the child's guardian ad litem.

30    (b) The notice shall state the placement to which the secretary ~~plans~~  
31    *proposes* to transfer the child and the reason for the proposed action. The  
32    notice shall be mailed by first class mail 30 days in advance of the planned  
33    transfer, except that the secretary shall not be required to wait 30 days  
34    to transfer the child if all persons enumerated in subsection (a) (2)  
35    through (5) consent in writing to the transfer *and the court orders such*  
36    *placement*.

37    (c) Within 10 days after receipt of the notice, any person receiving  
38    notice as provided above may request, either orally or in writing, that the  
39    court conduct a hearing to determine whether or not the change in place-  
40    ment is in the best interests of the child concerned. When the request  
41    has been received, the court shall schedule a hearing and immediately  
42    notify the secretary of the request and the time and date the matter will  
43    be heard. The court shall give notice of the hearing to persons enumer-

1 ated in subsection (a) (2) through (5). The secretary shall not change the  
2 placement of the child, ~~except for the purpose of adoption,~~ unless the  
3 change is ~~approved~~ *ordered* by the court.

4 (d) When, after the notice set out above, a child in the custody of the  
5 secretary is removed from the home of a parent after having been placed  
6 in the home of a parent for a period of six months or longer, the secretary  
7 shall request a finding that: (1)(A) The child is likely to sustain harm if  
8 not immediately removed from the home;

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

11 (C) immediate placement of the child is in the best interest of the  
12 child; and

13 (2) reasonable efforts have been made to maintain the family unit  
14 and prevent the unnecessary removal of the child from the child's home  
15 or that an emergency exists which threatens the safety to the child.

16 (e) The secretary shall present to the court in writing the efforts to  
17 maintain the family unit and prevent the unnecessary removal of the child  
18 from the child's home. In making the findings, the court may rely on  
19 documentation submitted by the secretary or may set the date for a hear-  
20 ing on the matter. If the secretary requests such finding, the court, not  
21 more than 45 days from the date of the request, shall provide the secretary  
22 with a written copy of the findings by the court for the purpose of doc-  
23 umenting these orders.

24 Sec. 6. K.S.A. 2009 Supp. 38-2259 is hereby amended to read as  
25 follows: 38-2259. (a) When an emergency exists requiring immediate ac-  
26 tion to assure the safety and protection of the child or the secretary is  
27 notified that the foster parents or shelter facility refuse to allow the child  
28 to remain, the secretary may transfer the child to another foster home or  
29 shelter facility without prior court approval. The secretary shall notify the  
30 court of the action at the earliest practical time. When the child is re-  
31 moved from the home of a parent after having been placed in the home  
32 for a period of six months or longer, the secretary shall present to the  
33 court in writing the specific nature of the emergency and reasons why it  
34 is contrary to the welfare of the child to remain in the placement and  
35 request a finding by the court whether remaining in the home is contrary  
36 to the welfare of the child. ~~If The court enters an order the court upon~~  
37 *weighing the evidence presented shall make a finding as to whether an*  
38 *emergency exists. Upon a finding by the court that an emergency exists,*  
39 *the court shall issue a temporary placement order for the child.* The court  
40 shall provide the secretary *and the child's parents* with a copy of the order.  
41 In making the finding, the court may rely on documentation submitted  
42 by the secretary or may set the date for a hearing on the matter. If the  
43 secretary requests such a finding, the court shall provide the secretary

1 with a written copy of the finding by the court not more than 45 days  
2 from the date of the request.

3 (b) The court shall not enter an order approving the removal of a  
4 child from the home of a parent pursuant to this section unless the court  
5 first finds probable cause that: (1)(A) The child is likely to sustain harm  
6 if not immediately removed from the home;

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

9 (C) immediate placement of the child is in the best interest of the  
10 child; and

11 (2) reasonable efforts have been made to maintain the family unit  
12 and prevent the unnecessary removal of the child from the child's home  
13 or that an emergency exists which threatens the safety to the child.

14 Sec. 7. K.S.A. 2009 Supp. 38-2263 is hereby amended to read as  
15 follows: 38-2263. (a) The goal of permanency planning is to assure, in so  
16 far as is possible, that children have permanency and stability in their  
17 living situations and that the continuity of family relationships and con-  
18 nections is preserved. In planning for permanency, the safety and well  
19 being of children shall be paramount.

20 (b) Whenever a child is subject to the jurisdiction of the court pur-  
21 suant to the code, an initial permanency plan shall be developed for the  
22 child and submitted to the court within 30 days of the initial order of the  
23 court. If the child is in the custody of the secretary, or the secretary is  
24 providing services to the child, the secretary shall prepare the plan. Oth-  
25 erwise, the plan shall be prepared by the person who has custody or, if  
26 directed by the court, by a court services officer.

27 (c) A permanency plan is a written document prepared, where pos-  
28 sible, in consultation with the child's parents and which:

29 (1) Describes the permanency goal which, if achieved, will most likely  
30 give the child a permanent and safe living arrangement;

31 (2) describes the child's level of physical health, mental and emotional  
32 health, and educational functioning;

33 (3) provides an assessment of the needs of the child and family;

34 (4) describes the services to be provided the child, the child's parents  
35 and the child's foster parents, if appropriate;

36 (5) includes a description of the tasks and responsibilities designed  
37 to achieve the plan and to whom assigned; and

38 (6) includes measurable objectives and time schedules for achieving  
39 the plan.

40 (d) In addition to the requirements of subsection (c), if the child is  
41 in an out of home placement, the permanency plan shall include:

42 (1) A plan for reintegration of the child's parent or parents or if re-  
43 integration is determined not to be a viable alternative, a statement for

1 the basis of that conclusion and a plan for another permanent living  
2 arrangement;

3 (2) a description of the available placement alternatives;

4 (3) a justification for the placement selected, including a description  
5 of the safety and appropriateness of the placement; and

6 (4) a description of the programs and services which will help the  
7 child prepare to live independently as an adult.

8 (e) *The permanency plan and placement of the child under the plan*  
9 *shall be approved by the court unless the court disapproves of the per-*  
10 *manency plan or placement whereupon the court shall set forth in its*  
11 *order the court's reasons for denying the permanency plan or placement*  
12 *or both.*

13 (f) If there is a lack of agreement among persons necessary for the  
14 success of the permanency plan, the person or entity having custody of  
15 the child shall notify the court which shall set a hearing on the plan.

16 ~~(f)~~ (g) A permanency plan may be amended at any time upon agree-  
17 ment of the plan participants *and order of the court*. If a permanency  
18 plan requires amendment which changes the permanency goal, the per-  
19 son or entity having custody of the child shall notify the court which shall  
20 set a permanency hearing pursuant to K.S.A. 2009 Supp. 38-2264 and 38-  
21 2265, and amendments thereto.

22 Sec. 8. K.S.A. 2009 Supp. 38-2264 is hereby amended to read as  
23 follows: 38-2264. (a) A permanency hearing is a proceeding conducted  
24 by the court or by a citizen review board for the purpose of determining  
25 progress toward accomplishment of a permanency plan as established by  
26 K.S.A. 2009 Supp. 38-2263, and amendments thereto.

27 (b) The court or a citizen review board shall hear and the court shall  
28 determine whether and, if applicable, when the child will be:

29 (1) Reintegrated with the child's parents;

30 (2) placed for adoption;

31 (3) placed with a permanent custodian; or

32 (4) if the secretary has documented compelling reasons why it would  
33 not be in the child's best interests for a placement in one of the place-  
34 ments pursuant to paragraphs (1), (2) or (3) placed in another planned  
35 permanent arrangement.

36 (c) The court shall enter a finding as to whether the person or entity  
37 having custody of the child has made reasonable efforts to accomplish the  
38 permanency plan in place at the time of the hearing.

39 (d) A permanency hearing shall be held within 12 months of the date  
40 the court authorized the child's removal from the home and not less  
41 frequently than every 12 months thereafter.

42 (e) If the court determines at any time other than during a perma-  
43 nency hearing that reintegration may not be a viable alternative for the

1 child, a permanency hearing shall be held no later than 30 days following  
2 that determination.

3 (f) When the court finds that reintegration continues to be a viable  
4 alternative, the court shall determine whether and, if applicable, when  
5 the child will be returned to the parent. The court may rescind any of its  
6 prior dispositional orders and enter any dispositional order authorized by  
7 this code or may order that a new plan for the reintegration be prepared  
8 and submitted to the court. If reintegration cannot be accomplished as  
9 ~~approved~~ *ordered* by the court, the court shall be informed and shall  
10 schedule a hearing pursuant to this section. No such hearing is required  
11 when the parents voluntarily relinquish parental rights or consent to ap-  
12 pointment of a permanent custodian.

13 (g) If the court finds reintegration is no longer a viable alternative,  
14 the court shall consider whether: (1) The child is in a stable placement  
15 with a relative; (2) services set out in the case plan necessary for the safe  
16 return of the child have been made available to the parent with whom  
17 reintegration is planned; or (3) compelling reasons are documented in  
18 the case plan to support a finding that neither adoption nor appointment  
19 of a permanent custodian are in the child's best interest. If reintegration  
20 is not a viable alternative and either adoption or appointment of a per-  
21 manent custodian might be in the best interests of the child, the county  
22 or district attorney or the county or district attorney's designee shall file  
23 a motion to terminate parental rights or a motion to appoint a permanent  
24 custodian within 30 days and the court shall set a hearing on such motion  
25 within 90 days of the filing of such motion.

26 (h) If the court enters an order terminating parental rights to a child,  
27 or an agency has accepted a relinquishment pursuant to K.S.A. 59-2124,  
28 and amendments thereto, the requirements for permanency hearings  
29 shall continue until an adoption or appointment of a permanent custodian  
30 ~~has been accomplished by order of the court~~. If the court determines that  
31 reasonable efforts or progress have not been made toward finding an  
32 adoptive placement or appointment of a permanent custodian or place-  
33 ment with a fit and willing relative, the court may rescind its prior orders  
34 and make others regarding custody and adoption that are appropriate  
35 under the circumstances. Reports of a proposed adoptive placement need  
36 not contain the identity of the proposed adoptive parents.

37 Sec. 9. K.S.A. 2009 Supp. 38-2270 is hereby amended to read as  
38 follows: 38-2270. (a) When parental rights have been terminated and it  
39 appears that adoption is a viable alternative, the court shall enter one of  
40 the following orders:

41 (1) An order granting custody of the child, for adoption proceedings,  
42 to the secretary or a corporation organized under the laws of the state of  
43 Kansas authorized to care for and surrender children for adoption as

1 provided in K.S.A. 38-112 et seq., and amendments thereto. The person,  
2 secretary or corporation shall, *upon order of the court*, have authority to  
3 place the child in a family home, and give consent for the legal adoption  
4 of the child which shall be the only consent required to authorize the  
5 entry of an order or decree of adoption.

6 (2) An order granting custody of the child to proposed adoptive par-  
7 ents and consenting to the adoption of the child by the proposed adoptive  
8 parents.

9 (b) In making an order under subsection (a), the court shall give pref-  
10 erence, to the extent that the court finds it is in the best interests of the  
11 child, first to granting such custody for adoption to a relative of the child  
12 and second to granting such custody to a person with whom the child has  
13 close emotional ties. *If the court denies custody for adoption to a relative*  
14 *of the child, it shall set forth its reasons for such denial in its order.*

15 (c) *Discharge upon adoption.* When an adoption decree has been  
16 filed with the court in the child in need of care case, the secretary's  
17 custody shall cease, the court's jurisdiction over the child shall cease and  
18 the court shall enter an order to that effect.

19 Sec. 10. K.S.A. 75-3330 is hereby amended to read as follows: 75-  
20 3330. The board is authorized to place any child committed to or received  
21 at a state institution in a private children's home *upon order by the court*  
22 *of proper jurisdiction.* The board may enter into contractual agreements  
23 with any private children's home to provide adequate care, custody, ed-  
24 ucation, training and treatment for any child so placed and to pay the  
25 costs of ~~said~~ *such* care, custody, education, training and treatment if the  
26 costs are not paid by the child's parents or guardian or if the child is not  
27 eligible to receive assistance under K.S.A. 39-709, or any amendments  
28 thereto. Any such contract shall be for a period of not to exceed five (5)  
29 years but the same may be renewed upon its expiration.

30 Sec. 11. K.S.A. 75-3330 and K.S.A. 2009 Supp. 38-2242, 38-2243,  
31 38-2252, 38-2255, 38-2258, 38-2259, 38-2263, 38-2264 and 38-2270 are  
32 hereby repealed.

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