

HOUSE BILL No. 2629

By Representative Finney

2-3

9 AN ACT concerning care of children; relating to temporary custody;
10 amending K.S.A. 2009 Supp. 38-2243 and repealing the existing
11 section.

12

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

14 Section 1. K.S.A. 2009 Supp. 38-2243 is hereby amended to read as
15 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
16 order directing who shall have temporary custody and may modify the
17 order during the pendency of the proceedings as will best serve the child's
18 welfare.

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

22 (c) Whenever it is determined that a temporary custody hearing is
23 required, the court shall immediately set the time and place for the hear-
24 ing. Notice of a temporary custody hearing shall be given to all parties
25 and interested parties. *The court shall allow the parents of the child to*
26 *submit the names of three individuals to whom the parent wishes to be*
27 *granted temporary custody of the child. The court shall determine if place-*
28 *ment of the child with one of the three individuals would be in the best*
29 *interests of the child.*

30 (d) Notice of the temporary custody hearing shall be given at least
31 24 hours prior to the hearing. The court may continue the hearing to
32 afford the 24 hours prior notice or, with the consent of the party or
33 interested party, proceed with the hearing at the designated time. If an
34 order of temporary custody is entered and the parent or other person
35 having custody of the child has not been notified of the hearing, did not
36 appear or waive appearance and requests a rehearing, the court shall
37 rehear the matter without unnecessary delay.

38 (e) Oral notice may be used for giving notice of a temporary custody
39 hearing where there is insufficient time to give written notice. Oral notice
40 is completed upon filing a certificate of oral notice.

41 (f) The court may enter an order of temporary custody after deter-
42 mining there is probable cause to believe that the: (1) Child is dangerous
43 to self or to others; (2) child is not likely to be available within the juris-

1 diction of the court for future proceedings; or (3) health or welfare of the
2 child may be endangered without further care.

3 (g) (1) Whenever the court determines the necessity for an order of
4 temporary custody the court may place the child in the temporary custody
5 of:

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

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

11 (C) a youth residential facility;

12 (D) a shelter facility; or

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

16 (2) If the secretary presents the court with a plan to provide services
17 to a child or family which the court finds will assure the safety of the
18 child, the court may only place the child in the temporary custody of the
19 secretary until the court finds the services are in place. The court shall
20 have the authority to require any person or entity agreeing to participate
21 in the plan to perform as set out in the plan. When the child is placed in
22 the temporary custody of the secretary, the secretary shall have the dis-
23 cretionary authority to place the child with a parent or to make other
24 suitable placement for the child. When the child is presently alleged, but
25 not yet adjudicated to be a child in need of care solely pursuant to sub-
26 section (d)(9) or (d)(10) of K.S.A. 2009 Supp. 38-2202, and amendments
27 thereto, the child may be placed in a juvenile detention facility or other
28 secure facility, but the total amount of time that the child may be held in
29 such facility under this section and K.S.A. 2009 Supp. 38-2242, and
30 amendments thereto, shall not exceed 24 hours, excluding Saturdays,
31 Sundays and legal holidays. The order of temporary custody shall remain
32 in effect until modified or rescinded by the court or an adjudication order
33 is entered but not exceeding 60 days, unless good cause is shown and
34 stated on the record.

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

43 (i) (1) The court shall not enter an order removing a child from the

1 custody of a parent pursuant to this section unless the court first finds
2 probable cause that: (A)(i) the child is likely to sustain harm if not im-
3 mediately removed from the home;
4 (ii) allowing the child to remain in home is contrary to the welfare of
5 the child; or
6 (iii) immediate placement of the child is in the best interest of the
7 child; and
8 (B) reasonable efforts have been made to maintain the family unit
9 and prevent the unnecessary removal of the child from the child's home
10 or that an emergency exists which threatens the safety to the child.
11 (2) Such findings shall be included in any order entered by the court.
12 If the child is placed in the custody of the secretary, upon making the
13 order the court shall provide the secretary with a written copy.
14 (j) If the court enters an order of temporary custody that provides
15 for placement of the child with a person other than the parent, the court
16 shall make a child support determination pursuant to K.S.A. 2009 Supp.
17 38-2277, and amendments thereto.
18 Sec. 2. K.S.A. 2009 Supp. 38-2243 is hereby repealed.
19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.