

HOUSE BILL No. 2581

By Committee on Child Welfare and Foster Care

Requested by Laura Howard on behalf of the Kansas Department for Children and Families

1-24

1 AN ACT concerning the secretary for children and families; relating to
2 child support payments; eliminating the requirement that the court
3 order child support to be paid to the secretary when custody of the child
4 is awarded to the secretary and the requirement that child support
5 payment requests shall be made in a child in need of care petition;
6 amending K.S.A. 38-2234 and K.S.A. 2023 Supp. 38-2255 and
7 repealing the existing sections.
8

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

10 Section 1. K.S.A. 38-2234 is hereby amended to read as follows: 38-
11 2234. (a) *Filing and contents of petition.* (1) A petition filed to commence
12 an action pursuant to this code shall be filed with the clerk of the district
13 court and shall state, if known:

- 14 (A) The name, date of birth and residence address of the child;
15 (B) the name and residence address of the child's parents;
16 (C) the name and address of the child's nearest known relative if no
17 parent can be found;
18 (D) the name and residence address of any persons having custody or
19 control of the child; and
20 (E) plainly and concisely in the language of the statutory definition,
21 the basis for the petition.

22 (2) The petition shall also state the specific facts that are relied upon
23 to support the allegation referred to in the preceding paragraph including
24 any known dates, times and locations.

25 (3) The proceedings shall be entitled: "In the Interest of
26 _____"
27

(4) The petition shall contain a request that the court find the child to
28 be a child in need of care.

29 ~~(5) The petition shall contain a request that the parent or parents be~~
30 ~~ordered to pay child support. The request for child support may be omitted~~
31 ~~with respect to a parent already ordered to pay child support for the child~~
32 ~~and shall be omitted with respect to one or both parents upon written~~
33 ~~request of the secretary.~~

34 (6) If the petition requests custody of the child to the secretary or a

1 person other than the child's parent, the petition shall specify the efforts
 2 known to the petitioner to have been made to maintain the family and
 3 prevent the transfer of custody, or it shall specify the facts demonstrating
 4 that an emergency exists ~~which~~ *that* threatens the safety ~~to~~ of the child.

5 ~~(7)~~(6) If the petition requests removal of the child from the child's
 6 home, in addition to the information required by K.S.A. 38-2234(a)(6),
 7 and amendments thereto, the petition shall specify the facts demonstrating
 8 that allowing the child to remain in the home would be contrary to the
 9 welfare of the child or that placement is in the best interests of the child
 10 and the child is likely to sustain harm if not removed from the home.

11 ~~(8)~~(7) The petition shall have an attached copy of the prevention plan,
 12 if any, that has been prepared for the child.

13 ~~(9)~~(8) The petition shall contain the following statement: "If you do
 14 not appear in court the court will be making decisions without your input
 15 ~~which~~ *that* could result in:

16 (A) The permanent or temporary removal of the child from the
 17 custody of the parent or present legal guardian;

18 (B) an order requiring one or both parents to pay child support until
 19 the permanent termination of one or both of the parents' parental rights;

20 (C) the permanent termination of one or both of the parents' parental
 21 rights; and

22 (D) the appointment of a permanent custodian for the child.

23 If you cannot attend the hearing you may send a written response to the
 24 petition to the clerk of the court."

25 ~~(10)~~(9) The petition shall contain the following statement: "You may
 26 receive further notices of other hearings, proceedings and actions in this
 27 case which you may attend. These notices will be sent to you by first class
 28 mail to your last known address or an address you provide to the court. It
 29 is your responsibility to keep the court informed of your current address."

30 (b) *Motions*. Motions may be made orally or in writing. The motion
 31 shall state with particularity the grounds for the motion and shall state the
 32 relief or order sought.

33 Sec. 2. K.S.A. 2023 Supp. 38-2255 is hereby amended to read as
 34 follows: 38-2255. (a) *Considerations*. Prior to entering an order of
 35 disposition, the court shall give consideration to:

36 (1) The child's physical, mental and emotional condition;

37 (2) the child's need for assistance;

38 (3) the manner ~~in~~ *by* which the parent participated in the abuse,
 39 neglect or abandonment of the child;

40 (4) any relevant information from the intake and assessment process;
 41 and

42 (5) the evidence received at the dispositional hearing.

43 (b) *Custody with a parent*. The court may place the child in the

1 custody of either of the child's parents subject to terms and conditions
2 ~~which~~ *that* the court prescribes to assure the proper care and protection of
3 the child, including, but not limited to:

4 (1) Supervision of the child and the parent by a court services officer;

5 (2) participation by the child and the parent in available programs
6 operated by an appropriate individual or agency; and

7 (3) any special treatment or care which the child needs for the child's
8 physical, mental or emotional health and safety.

9 (c) *Removal of a child from custody of a parent.* (1) The court shall
10 not enter the initial order removing a child from the custody of a parent
11 pursuant to this section unless the court first finds probable cause that:

12 ~~(A)~~(A)(i) The child is likely to sustain harm if not immediately
13 removed from the home;

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

16 ~~(C)~~(iii) immediate placement of the child is in the best interest of the
17 child; and

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

21 (2) The court shall not enter an order removing a child from the
22 custody of a parent pursuant to this section based solely on the finding that
23 the parent is homeless.

24 (d) *Custody of a child removed from the custody of a parent.* If the
25 court has made the findings required by subsection (c), the court shall
26 enter an order awarding custody to: A relative of the child or to a person
27 with whom the child has close emotional ties who shall not be required to
28 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,
29 and amendments thereto; any other suitable person; a shelter facility; a
30 youth residential facility; a staff secure facility, notwithstanding any other
31 provision of law, if the child has been subjected to human trafficking or
32 aggravated human trafficking, as defined by K.S.A. 21-5426, and
33 amendments thereto, or commercial sexual exploitation of a child, as
34 defined by K.S.A. 21-6422, and amendments thereto, or the child
35 committed an act ~~which~~ *that*, if committed by an adult, would constitute a
36 violation of K.S.A. 21-6419, and amendments thereto; or, if the child is 15
37 years of age or younger, or 16 or 17 years of age if the child has no
38 identifiable parental or family resources or shows signs of physical,
39 mental, emotional or sexual abuse, to the secretary. Custody awarded
40 under this subsection shall continue until further order of the court.

41 (1) When custody is awarded to the secretary, the secretary shall
42 consider any placement recommendation by the court and notify the court
43 of the placement or proposed placement of the child within 10 days of the

1 order awarding custody. After providing the parties or interested parties
2 notice and opportunity to be heard, the court may determine whether the
3 secretary's placement or proposed placement is contrary to the welfare or
4 in the best interests of the child. In making that determination the court
5 shall consider the health and safety needs of the child and the resources
6 available to meet the needs of children in the custody of the secretary. If
7 the court determines that the placement or proposed placement is contrary
8 to the welfare or not in the best interests of the child, the court shall notify
9 the secretary, who shall then make an alternative placement.

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

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

22 (4) The court may enter an order restraining any alleged perpetrator
23 of physical, mental or emotional abuse or sexual abuse of the child from:
24 Residing in the child's home; visiting, contacting, harassing or intimidating
25 the child, other family member or witness; or attempting to visit, contact,
26 harass or intimidate the child, other family member or witness. Such
27 restraining order shall be served by personal service pursuant to K.S.A.
28 38-2237(a), and amendments thereto, on any alleged perpetrator to whom
29 the order is directed.

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

33 (e) *Further determinations regarding a child removed from the home.*
34 If custody has been awarded under subsection (d) to a person other than a
35 parent, a permanency plan shall be provided or prepared pursuant to
36 K.S.A. 38-2264, and amendments thereto. If a permanency plan is
37 provided at the dispositional hearing, the court may determine whether
38 reintegration is a viable alternative or, if reintegration is not a viable
39 alternative, whether the child should be placed for adoption or a permanent
40 custodian appointed. In determining whether reintegration is a viable
41 alternative, the court shall consider *whether*:

42 (1) ~~Whether~~ A parent has been found by a court to have committed
43 one of the following crimes or to have violated the law of another state

1 prohibiting such crimes or to have aided and abetted, attempted, conspired
2 or solicited the commission of one of these crimes: (A) Murder in the first
3 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and
4 amendments thereto; (B) murder in the second degree, K.S.A. 21-3402,
5 prior to its repeal, or K.S.A. 21-5403, and amendments thereto; (C) capital
6 murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and
7 amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, prior to
8 its repeal, or K.S.A. 21-5404, and amendments thereto; or (E) a felony
9 battery that resulted in bodily injury;

10 (2) ~~whether~~ a parent has subjected the child or another child to
11 aggravated circumstances;

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

15 (4) ~~whether~~ the child has been in the custody of the secretary and
16 placed with neither parent for 15 of the most recent 22 months beginning
17 60 days after the date ~~on which~~ when a child in the secretary's custody was
18 removed from the child's home;

19 (5) ~~whether~~ the parents have failed to work diligently toward
20 reintegration;

21 (6) ~~whether~~ the secretary has provided the family with services
22 necessary for the safe return of the child to the home; and

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

25 (f) *Proceedings if reintegration is not a viable alternative.* If the court
26 determines that reintegration is not a viable alternative, proceedings to
27 terminate parental rights and permit placement of the child for adoption or
28 appointment of a permanent custodian shall be initiated unless the court
29 finds that compelling reasons have been documented in the case plan why
30 adoption or appointment of a permanent custodian would not be in the best
31 interests of the child. If compelling reasons have not been documented, the
32 county or district attorney shall file a motion within 30 days to terminate
33 parental rights or a motion to appoint a permanent custodian within 30
34 days, and the court shall hold a hearing on the motion within 90 days of its
35 filing. No hearing is required when the parents voluntarily relinquish
36 parental rights or consent to the appointment of a permanent custodian.

37 (g) *Additional orders.* In addition to or in lieu of any other order
38 authorized by this section:

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

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

3 (2) If the court has reason to believe that a child is before the court
4 due, in whole or in part, to the use or misuse of alcohol or a violation of
5 K.S.A. 21-5701 through 21-5717, and amendments thereto, by the child, a
6 parent of the child, or another person responsible for the care of the child,
7 the court may order the child, parent of the child or other person
8 responsible for the care of the child to submit to and complete an alcohol
9 and drug evaluation by a qualified person or agency and comply with any
10 recommendations. If the evaluation is performed by a community-based
11 alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and
12 amendments thereto, the child, parent of the child or other person
13 responsible for the care of the child shall pay a fee not to exceed the fee
14 established by that statute. If the court finds that the child and those legally
15 liable for the child's support are indigent, the fee may be waived. In no
16 event shall the fee be assessed against the secretary.

17 (3) If child support has been requested and the parent or parents have
18 a duty to support the child, the court may order one or both parents to pay
19 child support ~~and~~. When custody *of a child* is awarded to the secretary, the
20 court ~~shall~~ *may* order one or both parents to pay child support. *If the court*
21 *orders child support*, the court shall determine, for each parent separately,
22 whether the parent is already subject to an order to pay support for the
23 child. If the parent is not presently ordered to pay support for any child
24 who is subject to the jurisdiction of the court and the court has personal
25 jurisdiction over the parent, the court shall order the parent to pay child
26 support in an amount determined under K.S.A. 38-2277, and amendments
27 thereto. Except for good cause shown, the court shall issue an immediate
28 income withholding order pursuant to K.S.A. 23-3101 et seq., and
29 amendments thereto, for each parent ordered to pay support under this
30 subsection, regardless of whether a payor has been identified for the
31 parent. A parent ordered to pay child support under this subsection shall be
32 notified, at the hearing or otherwise, that the child support order may be
33 registered pursuant to K.S.A. 38-2279, and amendments thereto. The
34 parent shall also be informed that, after registration, the income
35 withholding order may be served on the parent's employer without further
36 notice to the parent and the child support order may be enforced by any
37 method allowed by law. Failure to provide this notice shall not affect the
38 validity of the child support order.

39 (h) For the purposes of this section, "harassing or intimidating" and
40 "harass or intimidate" ~~includes~~ *include*, but ~~is~~ *are* not limited to, utilizing
41 any electronic tracking system or acquiring tracking information to
42 determine the targeted person's location, movement or travel patterns.

43 Sec. 3. K.S.A. 38-2234 and K.S.A. 2023 Supp. 38-2255 are hereby

1 repealed.

2 Sec. 4. This act shall take effect and be in force from and after its
3 publication in the statute book.