

SENATE BILL No. 94

By Committee on Ways and Means

1-26

9 AN ACT concerning the Kansas code for care of children; relating to
10 placement of children into custody; amending K.S.A. 2008 Supp. 38-
11 2232, 38-2242, 38-2243 and 38-2255 and repealing the existing
12 sections.
13

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

15 Section 1. K.S.A. 2008 Supp. 38-2232 is hereby amended to read as
16 follows: 38-2232. (a) To the extent possible, when any law enforcement
17 officer takes into custody a child under the age of 18 years without a court
18 order, the child shall forthwith be delivered to the custody of the child's
19 parent or other custodian unless there are reasonable grounds to believe
20 that such action would not be in the best interests of the child. Except as
21 provided in subsection (b), if the child is not delivered to the custody of
22 the child's parent or other custodian, the child shall forthwith be delivered
23 to a facility or person designated by the secretary, a shelter facility des-
24 ignated by the court, court services officer, juvenile intake and assessment
25 worker, licensed attendant care center or other person or, if the child is
26 15 years of age or younger, or 16 or 17 years of age if the child shows
27 signs of physical, mental, emotional or sexual abuse, to a facility or person
28 designated by the secretary. If, after delivery of the child to a shelter
29 facility, the person in charge of the shelter facility at that time and the
30 law enforcement officer determine that the child will not remain in the
31 shelter facility and if the child is presently alleged, but not yet adjudicated,
32 to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10)
33 of K.S.A. 2008 Supp. 38-2202, and amendments thereto, the law enforce-
34 ment officer shall deliver the child to a juvenile detention facility or other
35 secure facility, designated by the court, where the child shall be detained
36 for not more than 24 hours, excluding Saturdays, Sundays and legal hol-
37 idays. No child taken into custody pursuant to this code shall be placed
38 in a juvenile detention facility or other secure facility, except as authorized
39 by this section and by K.S.A. 2008 Supp. 38-2242, 38-2243 and 38-2260,
40 and amendments thereto. It shall be the duty of the law enforcement
41 officer to furnish to the county or district attorney, without unnecessary
42 delay, all the information in the possession of the officer pertaining to the
43 child, the child's parents or other persons interested in or likely to be

has no identifiable parental
or family resources or

1 interested in the child and all other facts and circumstances which caused
2 the child to be taken into custody.

3 (b) When any law enforcement officer takes into custody any child as
4 provided in subsection (b)(2) of K.S.A. 2008 Supp. 38-2231, and amend-
5 ments thereto, proceedings shall be initiated in accordance with the pro-
6 visions of the interstate compact on juveniles, K.S.A. 38-1001 et seq., and
7 amendments thereto, or K.S.A. 2008 Supp. 38-1008, and amendments
8 thereto, when effective. Any child taken into custody pursuant to the
9 interstate compact on juveniles may be detained in a juvenile detention
10 facility or other secure facility.

11 (c) Whenever a child under the age of 18 years is taken into custody
12 by a law enforcement officer without a court order and is thereafter
13 placed as authorized by subsection (a), the facility or person shall, upon
14 written application of the law enforcement officer, have physical custody
15 and provide care and supervision for the child. The application shall state:

16 (1) The name and address of the child, if known;

17 (2) the names and addresses of the child's parents or nearest relatives
18 and persons with whom the child has been residing, if known; and

19 (3) the officer's belief that the child is a child in need of care and that
20 there are reasonable grounds to believe that the circumstances or con-
21 dition of the child is such that the child would be harmed unless placed
22 in the immediate custody of the shelter facility or other person.

23 (d) A copy of the application shall be furnished by the facility or
24 person receiving the child to the county or district attorney without un-
25 necessary delay.

26 (e) The shelter facility or other person designated by the court who
27 has custody of the child pursuant to this section shall discharge the child
28 not later than 72 hours following admission, excluding Saturdays, Sundays
29 and legal holidays, unless a court has entered an order pertaining to tem-
30 porary custody or release.

31 (f) In absence of a court order to the contrary, the county or district
32 attorney or the placing law enforcement agency shall have the authority
33 to direct the release of the child at any time.

34 (g) When any law enforcement officer takes into custody any child as
35 provided in subsection (d) of K.S.A. 2008 Supp. 38-2231, and amend-
36 ments thereto, the child shall forthwith be delivered to the school in
37 which the child is enrolled, any location designated by the school in which
38 the child is enrolled or the child's parent or other custodian.

39 Sec. 2. K.S.A. 2008 Supp. 38-2242 is hereby amended to read as
40 follows: 38-2242. (a) The court, upon verified application, may issue ex
41 parte an order directing that a child be held in protective custody and, if
42 the child has not been taken into custody, an order directing that the
43 child be taken into custody. The application shall state for each child:

1 (1) The applicant's belief that the child is a child in need of care;
2 (2) that the child is likely to sustain harm if not immediately removed
3 from the home;
4 (3) that allowing the child to remain in the home is contrary to the
5 welfare of the child; and
6 (4) the facts relied upon to support the application, including efforts
7 known to the applicant to maintain the family unit and prevent the un-
8 necessary removal of the child from the child's home, or the specific facts
9 supporting that an emergency exists which threatens the safety of the
10 child.

11 (b) (1) The order of protective custody may be issued only after the
12 court has determined there is probable cause to believe the allegations
13 in the application are true. The order shall remain in effect until the
14 temporary custody hearing provided for in K.S.A. 2008 Supp. 38-2243,
15 and amendments thereto, unless earlier rescinded by the court.

16 (2) No child shall be held in protective custody for more than 72
17 hours, excluding Saturdays, Sundays and legal holidays, unless within the
18 72-hour period a determination is made as to the necessity for temporary
19 custody in a temporary custody hearing. The time spent in custody pur-
20 suant to K.S.A. 2008 Supp. 38-2232, and amendments thereto, shall be
21 included in calculating the 72-hour period. Nothing in this subsection
22 shall be construed to mean that the child must remain in protective cus-
23 tody for 72 hours. If a child is in the protective custody of the secretary,
24 the secretary shall allow at least one supervised visit between the child
25 and the parent or parents within such time period as the child is in pro-
26 tective custody. The court may prohibit such supervised visit if the court
27 determines it is not in the best interest of the child.

28 (c) (1) Whenever the court determines the necessity for an order of
29 protective custody, the court may place the child in the protective custody
30 of:

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

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

36 (C) a youth residential facility;

37 (D) a shelter facility; or

38 (E) the secretary, if the child is 15 years of age or younger, or 16 or
39 17 years of age if the child shows signs of physical, mental, emotional or
40 sexual abuse.

has no identifiable parental
or family resources or

41 (2) If the secretary presents the court with a plan to provide services
42 to a child or family which the court finds will assure the safety of the
43 child, the court may only place the child in the protective custody of the

1 secretary until the court finds the services are in place. The court shall
2 have the authority to require any person or entity agreeing to participate
3 in the plan to perform as set out in the plan. When the child is placed in
4 the protective custody of the secretary, the secretary shall have the dis-
5 cretionary authority to place the child with a parent or to make other
6 suitable placement for the child. When the child is presently alleged, but
7 not yet adjudicated, to be a child in need of care solely pursuant to sub-
8 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments
9 thereto, the child may be placed in a juvenile detention facility or other
10 secure facility pursuant to an order of protective custody for a period of
11 not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

12 (d) The order of protective custody shall be served pursuant to sub-
13 section (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on
14 the child's parents and any other person having legal custody of the child.
15 The order shall prohibit the removal of the child from the court's juris-
16 diction without the court's permission.

17 (e) If the court issues an order of protective custody, the court may
18 also enter an order restraining any alleged perpetrator of physical, sexual,
19 mental or emotional abuse of the child from residing in the child's home;
20 visiting, contacting, harassing or intimidating the child, other family mem-
21 ber or witness; or attempting to visit, contact, harass or intimidate the
22 child, other family member or witness. Such restraining order shall be
23 served by personal service pursuant to subsection (a) of K.S.A. 2008 Supp.
24 38-2237, and amendments thereto, on any alleged perpetrator to whom
25 the order is directed.

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

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

32 (iii) immediate placement of the child is in the best interest of the
33 child; and

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

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

41 Sec. 3. K.S.A. 2008 Supp. 38-2243 is hereby amended to read as
42 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
43 order directing who shall have temporary custody and may modify the

1 order during the pendency of the proceedings as will best serve the child's
2 welfare.

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

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

10 (d) Notice of the temporary custody hearing shall be given at least
11 24 hours prior to the hearing. The court may continue the hearing to
12 afford the 24 hours prior notice or, with the consent of the party or
13 interested party, proceed with the hearing at the designated time. If an
14 order of temporary custody is entered and the parent or other person
15 having custody of the child has not been notified of the hearing, did not
16 appear or waive appearance and requests a rehearing, the court shall
17 rehear the matter without unnecessary delay.

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

21 (f) The court may enter an order of temporary custody after deter-
22 mining there is probable cause to believe that the: (1) Child is dangerous
23 to self or to others; (2) child is not likely to be available within the juris-
24 diction of the court for future proceedings; or (3) health or welfare of the
25 child may be endangered without further care.

26 (g) (1) Whenever the court determines the necessity for an order of
27 temporary custody the court may place the child in the temporary custody
28 of:

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

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

34 (C) a youth residential facility;

35 (D) a shelter facility; or

36 (E) the secretary, if the child is 15 years of age or younger, or 16 or
37 17 years of age if the child shows signs of physical, mental, emotional or
38 sexual abuse.

has no identifiable parental
or family resources or

39 (2) If the secretary presents the court with a plan to provide services
40 to a child or family which the court finds will assure the safety of the
41 child, the court may only place the child in the temporary custody of the
42 secretary until the court finds the services are in place. The court shall
43 have the authority to require any person or entity agreeing to participate

1 in the plan to perform as set out in the plan. When the child is placed in
2 the temporary custody of the secretary, the secretary shall have the dis-
3 cretionary authority to place the child with a parent or to make other
4 suitable placement for the child. When the child is presently alleged, but
5 not yet adjudicated to be a child in need of care solely pursuant to sub-
6 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments
7 thereto, the child may be placed in a juvenile detention facility or other
8 secure facility, but the total amount of time that the child may be held in
9 such facility under this section and K.S.A. 2008 Supp. 38-2242, and
10 amendments thereto, shall not exceed 24 hours, excluding Saturdays,
11 Sundays and legal holidays. The order of temporary custody shall remain
12 in effect until modified or rescinded by the court or an adjudication order
13 is entered but not exceeding 60 days, unless good cause is shown and
14 stated on the record.

15 (h) If the court issues an order of temporary custody, the court may
16 also enter an order restraining any alleged perpetrator of physical, sexual,
17 mental or emotional abuse of the child from residing in the child's home;
18 visiting, contacting, harassing or intimidating the child; or attempting to
19 visit, contact, harass or intimidate the child, other family members or
20 witnesses. Such restraining order shall be served by personal service pur-
21 suant to subsection (a) of K.S.A. 2008 Supp. 38-2237, and amendments
22 thereto, on any alleged perpetrator to whom the order is directed.

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

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

29 (iii) immediate placement of the child is in the best interest of the
30 child; and

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

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

37 (j) If the court enters an order of temporary custody that provides
38 for placement of the child with a person other than the parent, the court
39 shall make a child support determination pursuant to K.S.A. 2008 Supp.
40 38-2277, and amendments thereto.

41 Sec. 4. K.S.A. 2008 Supp. 38-2255 is hereby amended to read as
42 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-
43 position, the court shall give consideration to:

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

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

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

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

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

23 (C) immediate placement of the child is in the best interest of the
 24 child; and

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

28 (d) *Custody of a child removed from the custody of a parent.* If the
 29 court has made the findings required by subsection (c), the court shall
 30 enter an order awarding custody to a relative of the child or to a person
 31 with whom the child has close emotional ties, to any other suitable person,
 32 to a shelter facility, to a youth residential facility or, *if the child is 15 years*
 33 *of age or younger, or 16 or 17 years of age if the child* ~~shows signs of~~ *has no identifiable parental*
 34 *physical, mental, emotional or sexual abuse,* to the secretary. Custody *or family resources or*
 35 awarded under this subsection shall continue until further order of the
 36 court.

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

41 (A) After providing the parties or interested parties notice and op-
 42 portunity to be heard, the court may determine whether the secretary's
 43 placement or proposed placement is contrary to the welfare or in the best

1 interests of the child. In making that determination the court shall con-
2 sider the health and safety needs of the child and the resources available
3 to meet the needs of children in the custody of the secretary. If the court
4 determines that the placement or proposed placement is contrary to the
5 welfare or not in the best interests of the child, the court shall notify the
6 secretary, who shall then make an alternative placement.

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

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

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

24 (4) The court may enter an order restraining any alleged perpetrator
25 of physical, mental or emotional abuse or sexual abuse of the child from
26 residing in the child's home; visiting, contacting, harassing or intimidating
27 the child, other family member or witness; or attempting to visit, contact,
28 harass or intimidate the child, other family member or witness. Such
29 restraining order shall be served by personal service pursuant to subsec-
30 tion (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on any
31 alleged perpetrator to whom the order is directed.

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

35 (e) *Further determinations regarding a child removed from the home.*
36 If custody has been awarded under subsection (d) to a person other than
37 a parent, a permanency plan shall be provided or prepared pursuant to
38 K.S.A. 2008 Supp. 38-2264, and amendments thereto. If a permanency
39 plan is provided at the dispositional hearing, the court may determine
40 whether reintegration is a viable alternative or, if reintegration is not a
41 viable alternative, whether the child should be placed for adoption or a
42 permanent custodian appointed. In determining whether reintegration is
43 a viable alternative, the court shall consider:

- 1 (1) Whether a parent has been found by a court to have committed
2 one of the following crimes or to have violated the law of another state
3 prohibiting such crimes or to have aided and abetted, attempted, con-
4 spired or solicited the commission of one of these crimes: Murder in the
5 first degree, K.S.A. 21-3401, and amendments thereto, murder in the
6 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,
7 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.
8 21-3403, and amendments thereto, or a felony battery that resulted in
9 bodily injury;
- 10 (2) whether a parent has subjected the child or another child to ag-
11 gravated 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 extended out of home placement;
- 16 (5) whether the parents have failed to work diligently toward
17 reintegration;
- 18 (6) whether the secretary has provided the family with services nec-
19 essary for the safe return of the child to the home; and
- 20 (7) whether it is reasonable to expect reintegration to occur within a
21 time frame consistent with the child's developmental needs.
- 22 (f) *Proceedings if reintegration is not a viable alternative.* If the court
23 determines that reintegration is not a viable alternative, proceedings to
24 terminate parental rights and permit placement of the child for adoption
25 or appointment of a permanent custodian shall be initiated unless the
26 court finds that compelling reasons have been documented in the case
27 plan why adoption or appointment of a permanent custodian would not
28 be in the best interests of the child. If compelling reasons have not been
29 documented, the county or district attorney shall file a motion within 30
30 days to terminate parental rights or a motion to appoint a permanent
31 custodian within 30 days and the court shall hold a hearing on the motion
32 within 90 days of its filing. No hearing is required when the parents
33 voluntarily relinquish parental rights or consent to the appointment of a
34 permanent custodian.
- 35 (g) *Additional Orders.* In addition to or in lieu of any other order
36 authorized by this section:
- 37 (1) The court may order the child and the parents of any child who
38 has been adjudicated a child in need of care to attend counseling sessions
39 as the court directs. The expense of the counseling may be assessed as
40 an expense in the case. No mental health provider shall charge a greater
41 fee for court-ordered counseling than the provider would have charged
42 to the person receiving counseling if the person had requested counseling
43 on the person's own initiative.

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

15 (3) If child support has been requested and the parent or parents
16 have a duty to support the child, the court may order one or both parents
17 to pay child support and, when custody is awarded to the secretary, the
18 court shall order one or both parents to pay child support. The court shall
19 determine, for each parent separately, whether the parent is already sub-
20 ject to an order to pay support for the child. If the parent is not presently
21 ordered to pay support for any child who is subject to the jurisdiction of
22 the court and the court has personal jurisdiction over the parent, the court
23 shall order the parent to pay child support in an amount determined
24 under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for
25 good cause shown, the court shall issue an immediate income withholding
26 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for
27 each parent ordered to pay support under this subsection, regardless of
28 whether a payor has been identified for the parent. A parent ordered to
29 pay child support under this subsection shall be notified, at the hearing
30 or otherwise, that the child support order may be registered pursuant to
31 K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall
32 also be informed that, after registration, the income withholding order
33 may be served on the parent's employer without further notice to the
34 parent and the child support order may be enforced by any method al-
35 lowed by law. Failure to provide this notice shall not affect the validity of
36 the child support order.

37 Sec. 5. K.S.A. 2008 Supp. 38-2232, 38-2242, 38-2243 and 38-2255
38 are hereby repealed.

39 Sec. 6. This act shall take effect and be in force from and after its
40 publication in the statute book.