

SENATE BILL No. 104

By Committee on Judiciary

1-28

1 AN ACT concerning children and minors; relating to the revised Kansas
2 code for care of children; requiring court orders to remain in a present
3 or future placement; amending K.S.A. 2020 Supp. 38-2260 and
4 repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 38-2260 is hereby amended to read as
8 follows: 38-2260. (a) *Valid court order.* During proceedings under this
9 code, the court ~~may~~ shall enter an order directing a child who is the subject
10 of the proceedings to remain in a present or future placement if:

11 (1) The child and the child's guardian ad litem are present in court
12 when the order is entered;

13 (2) the court finds that the child has been adjudicated a child in need
14 of care pursuant to K.S.A. 2020 Supp. 38-2202(d)(6), (d)(7), (d)(8), (d)(9),
15 (d)(10) or (d)(12), and amendments thereto, and that the child is not likely
16 to be available within the jurisdiction of the court for future proceedings;

17 (3) the child and the guardian ad litem receive oral and written notice
18 of the consequences of violation of the order; and

19 (4) a copy of the written notice is filed in the official case file.

20 (b) *Application.* Any person may file a verified application for
21 determination that a child has violated an order entered pursuant to
22 subsection (a) and for an order authorizing holding the child in a secure
23 facility. The application shall state the applicant's belief that the child has
24 violated the order entered pursuant to subsection (a) without good cause
25 and the specific facts supporting the allegation.

26 (c) *Ex parte order.* After reviewing the application filed pursuant to
27 subsection (b), the court may enter an ex parte order directing that the
28 child be taken into custody and held in a secure facility designated by the
29 court, if the court finds probable cause that the child violated the court's
30 order to remain in placement without good cause. Pursuant to K.S.A. 2020
31 Supp. 38-2237, and amendments thereto, the order shall be served on the
32 child's parents, the child's legal custodian and the child's guardian ad litem.

33 (d) *Preliminary hearing.* Within 24 hours following a child's being
34 taken into custody pursuant to an order issued under subsection (c), the
35 court shall hold a preliminary hearing to determine whether the child
36 admits or denies the allegations of the application and, if the child denies

1 the allegations, to determine whether probable cause exists to support the
2 allegations.

3 (1) Notice of the time and place of the preliminary hearing shall be
4 given orally or in writing to the child's parents, the child's legal custodian
5 and the child's guardian ad litem.

6 (2) At the hearing, the child shall have the right to a guardian ad litem
7 and shall be served with a copy of the application.

8 (3) If the child admits the allegations or enters a no contest statement
9 and if the court finds that the admission or no contest statement is
10 knowledgeable and voluntary, the court shall proceed without delay to the
11 placement hearing pursuant to subsection (f).

12 (4) If the child denies the allegations, the court shall determine
13 whether probable cause exists to hold the child in a secure facility pending
14 an evidentiary hearing pursuant to subsection (e). After hearing the
15 evidence, if the court finds that:

16 (A) There is probable cause to believe that the child has violated an
17 order entered pursuant to subsection (a) without good cause; and

18 (B) placement in a secure facility is necessary for the protection of
19 the child or to assure the presence of the child at the evidentiary hearing
20 pursuant to subsection (e), the court may order the child held in a secure
21 facility pending the evidentiary hearing.

22 (e) *Evidentiary hearing.* The court shall hold an evidentiary hearing
23 on an application within 72 hours of the child's being taken into custody.
24 Notice of the time and place of the hearing shall be given orally or in
25 writing to the child's parents, the child's legal custodian and the child's
26 guardian ad litem. At the evidentiary hearing, the court shall determine by
27 a clear and convincing evidence whether the child has:

28 (1) Violated a court order entered pursuant to subsection (a) without
29 good cause;

30 (2) been provided at the hearing with the rights enumerated in
31 subsection (d)(2); and

32 (3) been informed of:

33 (A) The nature and consequences of the proceeding;

34 (B) the right to confront and cross-examine witnesses and present
35 evidence;

36 (C) the right to have a transcript or recording of the proceedings; and

37 (D) the right to appeal.

38 (f) *Placement.* (1) If the child admits violating the order entered
39 pursuant to subsection (a) or if, after an evidentiary hearing, the court finds
40 that the child has violated such an order, the court shall immediately
41 proceed to a placement hearing. The court may enter an order awarding
42 custody of the child to:

43 (A) A parent or other legal custodian;

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

4 (C) a youth residential facility; or

5 (D) the secretary, if the secretary does not already have legal custody
6 of the child.

7 (2) The court may authorize the custodian to place the child in a
8 secure facility, if the court determines that all other placement options have
9 been exhausted or are inappropriate, based upon a written report submitted
10 by the secretary, if the child is in the secretary's custody, or submitted by a
11 public agency independent of the court and law enforcement, if the child is
12 in the custody of someone other than the secretary. The report shall detail
13 the behavior of the child and the circumstances under which the child was
14 brought before the court and made subject to the order entered pursuant to
15 subsection (a).

16 (3) The authorization to place the child in a secure facility pursuant to
17 this subsection shall expire 60 days, inclusive of weekend and legal
18 holidays, after its issue. The court may grant extensions of such
19 authorization for two additional periods, each not to exceed 60 days, upon
20 rehearing pursuant to K.S.A. 2020 Supp. 38-2256, and amendments
21 thereto.

22 (g) *Payment.* The secretary shall only pay for placement and services
23 for a child placed in a secure facility pursuant to subsection (f) upon
24 receipt of a valid court order authorizing secure care placement.

25 (h) *Limitations on facilities used.* Nothing in this section shall
26 authorize placement of a child in an adult jail or lockup.

27 (i) *Time limits, computation.* Except as otherwise specifically
28 provided by subsection (f), Saturdays, Sundays, legal holidays, and days
29 on which the office of the clerk of the court is not accessible shall not be
30 counted in computing any time limit imposed by this section.

31 Sec. 2. K.S.A. 2020 Supp. 38-2260 is hereby repealed.

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