

HOUSE BILL No. 2105

By Committee on Children and Families

1-26

1 AN ACT concerning children in need of care; relating to removal of a
2 child from parent's custody; amending K.S.A. 2010 Supp. 38-2255
3 and repealing the existing section; also repealing K.S.A. 2010 Supp.
4 38-2255a.

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

7 Section 1. K.S.A. 2010 Supp. 38-2255 is hereby amended to read as
8 follows: 38-2255. (a) *Considerations.* Prior to entering an order of
9 disposition, the court shall give consideration to:

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

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

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

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

30 (A) The child is likely to sustain harm if not immediately removed from
31 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

1 and prevent the unnecessary removal of the child from the child's home
2 or that an emergency exists which threatens the safety to the child.

3 *The court shall not enter an order removing a child from the custody*
4 *of a parent pursuant to this section based solely on the finding that the*
5 *parent is homeless.*

6 (d) *Custody of a child removed from the custody of a parent.* If the
7 court has made the findings required by subsection (c), the court shall
8 enter an order awarding custody to a relative of the child or to a person
9 with whom the child has close emotional ties who shall not be required to
10 be licensed under article 5 of chapter 65 of the Kansas Statutes
11 Annotated, and amendments thereto, to any other suitable person, to a
12 shelter facility, to a youth residential facility or, if the child is 15 years of
13 age or younger, or 16 or 17 years of age if the child has no identifiable
14 parental or family resources or shows signs of physical, mental,
15 emotional or sexual abuse, to the secretary. Custody awarded under this
16 subsection shall continue until further order of the court.

17 (1) When custody is awarded to the secretary, the secretary shall
18 consider any placement recommendation by the court and notify the court
19 of the placement or proposed placement of the child within 10 days of the
20 order awarding custody. After providing the parties or interested parties
21 notice and opportunity to be heard, the court may determine whether the
22 secretary's placement or proposed placement is contrary to the welfare or
23 in the best interests of the child. In making that determination the court
24 shall consider the health and safety needs of the child and the resources
25 available to meet the needs of children in the custody of the secretary. If
26 the court determines that the placement or proposed placement is contrary
27 to the welfare or not in the best interests of the child, the court shall notify
28 the secretary, who shall then make an alternative placement.

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

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

41 (4) The court may enter an order restraining any alleged perpetrator
42 of physical, mental or emotional abuse or sexual abuse of the child from
43 residing in the child's home; visiting, contacting, harassing or

1 intimidating the child, other family member or witness; or attempting to
2 visit, contact, harass or intimidate the child, other family member or
3 witness. Such restraining order shall be served by personal service
4 pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and
5 amendments thereto, on any alleged perpetrator to whom the order is
6 directed.

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

10 (e) *Further determinations regarding a child removed from the*
11 *home.* If custody has been awarded under subsection (d) to a person other
12 than a parent, a permanency plan shall be provided or prepared pursuant
13 to K.S.A. 2010 Supp. 38-2264, and amendments thereto. If a permanency
14 plan is provided at the dispositional hearing, the court may determine
15 whether reintegration is a viable alternative or, if reintegration is not a
16 viable alternative, whether the child should be placed for adoption or a
17 permanent custodian appointed. In determining whether reintegration is a
18 viable alternative, the court shall consider:

19 (1) Whether a parent has been found by a court to have committed
20 one of the following crimes or to have violated the law of another state
21 prohibiting such crimes or to have aided and abetted, attempted,
22 conspired or solicited the commission of one of these crimes: (A) Murder
23 in the first degree, K.S.A. 21-3401, *prior to its repeal, or section 37 of*
24 *chapter 136 of the 2010 Session Laws of Kansas,* and amendments
25 thereto;; (B) murder in the second degree, K.S.A. 21-3402, *prior to its*
26 *repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas,*
27 and amendments thereto;; (C) capital murder, K.S.A. 21-3439, *prior to*
28 *its repeal or section 36 of chapter 136 of the 2010 Session Laws of*
29 *Kansas,* and amendments thereto;; (D) voluntary manslaughter, K.S.A.
30 21-3403, *prior to its repeal or section 39 of chapter 136 of the 2010*
31 *Session Laws of Kansas,* and amendments thereto;; or (E) a felony battery
32 that resulted in bodily injury;

33 (2) whether a parent has subjected the child or another child to
34 aggravated circumstances;

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

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

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

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

43 (7) whether it is reasonable to expect reintegration to occur within a

1 time frame consistent with the child's developmental needs.

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

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

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

24 (2) If the court has reason to believe that a child is before the court
25 due, in whole or in part, to the use or misuse of alcohol or a violation of
26 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,
27 by the child, a parent of the child, or another person responsible for the
28 care of the child, the court may order the child, parent of the child or
29 other person responsible for the care of the child to submit to and
30 complete an alcohol and drug evaluation by a qualified person or agency
31 and comply with any recommendations. If the evaluation is performed by
32 a community-based alcohol and drug safety program certified pursuant to
33 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
34 other person responsible for the care of the child shall pay a fee not to
35 exceed the fee established by that statute. If the court finds that the child
36 and those legally liable for the child's support are indigent, the fee may be
37 waived. In no event shall the fee be assessed against the secretary.

38 (3) If child support has been requested and the parent or parents
39 have a duty to support the child, the court may order one or both parents
40 to pay child support and, when custody is awarded to the secretary, the
41 court shall order one or both parents to pay child support. The court shall
42 determine, for each parent separately, whether the parent is already
43 subject to an order to pay support for the child. If the parent is not

1 presently ordered to pay support for any child who is subject to the
2 jurisdiction of the court and the court has personal jurisdiction over the
3 parent, the court shall order the parent to pay child support in an amount
4 determined under K.S.A. 2010 Supp. 38-2277, and amendments thereto.
5 Except for good cause shown, the court shall issue an immediate income
6 withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments
7 thereto, for each parent ordered to pay support under this subsection,
8 regardless of whether a payor has been identified for the parent. A parent
9 ordered to pay child support under this subsection shall be notified, at the
10 hearing or otherwise, that the child support order may be registered
11 pursuant to K.S.A. 2010 Supp. 38-2279, and amendments thereto. The
12 parent shall also be informed that, after registration, the income
13 withholding order may be served on the parent's employer without further
14 notice to the parent and the child support order may be enforced by any
15 method allowed by law. Failure to provide this notice shall not affect the
16 validity of the child support order.

17 Sec. 2. K.S.A. 2010 Supp. 38-2255 and 38-2255a are hereby
18 repealed.

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