

[As Amended by House Committee of the Whole]

Session of 2011

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.

5
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
8 as 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,
13 neglect or abandonment of the child;
14 (4) any relevant information from the intake and assessment
15 process; 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
20 the 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
26 child's physical, mental or emotional health and safety.

27 (c) *Removal of a child from custody of a parent*. The court shall
28 not 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:
30 (1)(A) The child is likely to sustain harm if not immediately removed
31 from the home;

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

1 (C) immediate placement of the child is in the best interest of the
2 child; and

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

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

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

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

33 (2) The custodian designated under this subsection shall notify the
34 court in writing at least ~~10~~ **[10]** days prior to any planned placement
35 with a parent. The written notice shall state the basis for the custodian's
36 belief that placement with a parent is no longer contrary to the welfare
37 or best interest of the child. Upon reviewing the notice, the court may
38 allow the custodian to proceed with the planned placement or may set
39 the date for a hearing to determine if the child shall be allowed to return

1 home. If the court sets a hearing on the matter, the custodian shall not
2 return the child home without written consent of the court.

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

6 (4) The court may enter an order restraining any alleged
7 perpetrator of physical, mental or emotional abuse or sexual abuse of
8 the child from residing in the child's home; visiting, contacting,
9 harassing or intimidating the child, other family member or witness; or
10 attempting to visit, contact, harass or intimidate the child, other family
11 member or witness. Such restraining order shall be served by personal
12 service pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and
13 amendments thereto, on any alleged perpetrator to whom the order is
14 directed.

15 (5) The court shall provide a copy of any orders entered within ~~10~~
16 **[] 14 [10]** days of entering the order to the custodian designated under
17 this subsection.

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

27 (1) Whether a parent has been found by a court to have committed
28 one of the following crimes or to have violated the law of another state
29 prohibiting such crimes or to have aided and abetted, attempted,
30 conspired or solicited the commission of one of these crimes: (A)
31 Murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or*
32 *section 37 of chapter 136 of the 2010 Session Laws of Kansas,* and
33 amendments thereto;; (B) murder in the second degree, K.S.A. 21-
34 3402, *prior to its repeal, or section 38 of chapter 136 of the 2010*
35 *Session Laws of Kansas,* and amendments thereto;; (C) capital murder,
36 K.S.A. 21-3439, *prior to its repeal or section 36 of chapter 136 of the*
37 *2010 Session Laws of Kansas,* and amendments thereto;; (D) voluntary
38 manslaughter, K.S.A. 21-3403, *prior to its repeal or section 39 of*
39 *chapter 136 of the 2010 Session Laws of Kansas,* and amendments

- 1 thereto; or (E) a felony battery that resulted in bodily injury;
- 2 (2) whether a parent has subjected the child or another child to
3 aggravated circumstances;
- 4 (3) whether a parent has previously been found to be an unfit
5 parent in proceedings under this code or in comparable proceedings
6 under the laws of another state or the federal government;
- 7 (4) whether the child has been in extended out of home placement;
- 8 (5) whether the parents have failed to work diligently toward
9 reintegration;
- 10 (6) whether the secretary has provided the family with services
11 necessary for the safe return of the child to the home; and
- 12 (7) whether it is reasonable to expect reintegration to occur within
13 a time frame consistent with the child's developmental needs.
- 14 (f) *Proceedings if reintegration is not a viable alternative.* If the
15 court determines that reintegration is not a viable alternative,
16 proceedings to terminate parental rights and permit placement of the
17 child for adoption or appointment of a permanent custodian shall be
18 initiated unless the court finds that compelling reasons have been
19 documented in the case plan why adoption or appointment of a
20 permanent custodian would not be in the best interests of the child. If
21 compelling reasons have not been documented, the county or district
22 attorney shall file a motion within 30 days to terminate parental rights
23 or a motion to appoint a permanent custodian within 30 days and the
24 court shall hold a hearing on the motion within 90 days of its filing. No
25 hearing is required when the parents voluntarily relinquish parental
26 rights or consent to the appointment of a permanent custodian.
- 27 (g) *Additional Orders.* In addition to or in lieu of any other order
28 authorized by this section:
- 29 (1) The court may order the child and the parents of any child who
30 has been adjudicated a child in need of care to attend counseling
31 sessions as the court directs. The expense of the counseling may be
32 assessed as an expense in the case. No mental health provider shall
33 charge a greater fee for court-ordered counseling than the provider
34 would have charged to the person receiving counseling if the person
35 had requested counseling on the person's own initiative.
- 36 (2) If the court has reason to believe that a child is before the court
37 due, in whole or in part, to the use or misuse of alcohol or a violation of
38 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments
39 thereto, by the child, a parent of the child, or another person responsible

1 for the care of the child, the court may order the child, parent of the
2 child or other person responsible for the care of the child to submit to
3 and complete an alcohol and drug evaluation by a qualified person or
4 agency and comply with any recommendations. If the evaluation is
5 performed by a community-based alcohol and drug safety program
6 certified pursuant to K.S.A. 8-1008, and amendments thereto, the child,
7 parent of the child or other person responsible for the care of the child
8 shall pay a fee not to exceed the fee established by that statute. If the
9 court finds that the child and those legally liable for the child's support
10 are indigent, the fee may be waived. In no event shall the fee be
11 assessed against the secretary.

12 (3) If child support has been requested and the parent or parents
13 have a duty to support the child, the court may order one or both
14 parents to pay child support and, when custody is awarded to the
15 secretary, the court shall order one or both parents to pay child support.
16 The court shall determine, for each parent separately, whether the
17 parent is already subject to an order to pay support for the child. If the
18 parent is not presently ordered to pay support for any child who is
19 subject to the jurisdiction of the court and the court has personal
20 jurisdiction over the parent, the court shall order the parent to pay child
21 support in an amount determined under K.S.A. 2010 Supp. 38-2277,
22 and amendments thereto. Except for good cause shown, the court shall
23 issue an immediate income withholding order pursuant to K.S.A. 23-
24 4,105 et seq., and amendments thereto, for each parent ordered to pay
25 support under this subsection, regardless of whether a payor has been
26 identified for the parent. A parent ordered to pay child support under
27 this subsection shall be notified, at the hearing or otherwise, that the
28 child support order may be registered pursuant to K.S.A. 2010 Supp.
29 38-2279, and amendments thereto. The parent shall also be informed
30 that, after registration, the income withholding order may be served on
31 the parent's employer without further notice to the parent and the child
32 support order may be enforced by any method allowed by law. Failure
33 to provide this notice shall not affect the validity of the child support
34 order.

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

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