

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 and
3 repealing the existing section; also repealing K.S.A. 2010 Supp. 38-
4 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 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 officer;
22 (2) participation by the child and the parent in available programs
23 operated by an appropriate individual or agency; and
24 (3) any special treatment or care which the child needs for the child's
25 physical, mental or emotional health and safety.

26 (c) *Removal of a child from custody of a parent.* The court shall not
27 enter the initial order removing a child from the custody of a parent
28 pursuant to this section unless the court first finds probable cause that: (1)
29 (A) The child is likely to sustain harm if not immediately removed from
30 the home;

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

33 (C) immediate placement of the child is in the best interest of the
34 child; and

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

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

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

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

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

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

42 (4) The court may enter an order restraining any alleged perpetrator
43 of physical, mental or emotional abuse or sexual abuse of the child from

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

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

10 (e) *Further determinations regarding a child removed from the home.*
 11 If custody has been awarded under subsection (d) to a person other than a
 12 parent, a permanency plan shall be provided or prepared pursuant to
 13 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, conspired
 22 or solicited the commission of one of these crimes: (A) Murder in the first
 23 degree, K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of*
 24 *the 2010 Session Laws of Kansas*, and amendments thereto; (B) murder in
 25 the second degree, K.S.A. 21-3402, *prior to its repeal, or section 38 of*
 26 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
 27 thereto; (C) capital murder, K.S.A. 21-3439, *prior to its repeal or section*
 28 *36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
 29 thereto; (D) voluntary manslaughter, K.S.A. 21-3403, *prior to its repeal*
 30 *or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and
 31 amendments thereto; or (E) a felony battery that resulted in bodily injury;

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

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

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

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

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

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

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

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

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

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

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

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

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

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