

HOUSE BILL No. 2538

By Committee on Children and Families

1-25

1 AN ACT concerning children in need of care; relating to reimbursement
2 costs of care for child in a grandparent's custody; amending K.S.A.
3 2011 Supp. 38-2255 and repealing the existing section; also repealing
4 K.S.A. 2011 Supp. 38-2255b.
5

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

7 Section 1. K.S.A. 2011 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

35 (2) reasonable efforts have been made to maintain the family unit and
36 prevent the unnecessary removal of the child from the child's home or that

1 an emergency exists which threatens the safety to the child.

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

5 (d) *Custody of a child removed from the custody of a parent.* If the
6 court has made the findings required by subsection (c), the court shall
7 enter an order awarding custody to a relative of the child or to a person
8 with whom the child has close emotional ties who shall not be required to
9 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,
10 and amendments thereto, to any other suitable person, to a shelter facility,
11 to a youth residential facility or, if the child is 15 years of age or younger,
12 or 16 or 17 years of age if the child has no identifiable parental or family
13 resources or shows signs of physical, mental, emotional or sexual abuse, to
14 the secretary. *When the child is placed in the custody of the child's*
15 *grandparent, the secretary shall have the power and authority to provide a*
16 *sufficient amount of reimbursement to the grandparent for the cost of care*
17 *of such child after considering the grandparent's resources available to*
18 *meet the needs of the child, except that the amount of reimbursement shall*
19 *not exceed the maximum reimbursement rate that foster care parents*
20 *receive for the care of the child under similar circumstances.* Custody
21 awarded under this subsection shall continue until further order of the
22 court.

23 (1) When custody is awarded to the secretary, the secretary shall
24 consider any placement recommendation by the court and notify the court
25 of the placement or proposed placement of the child within ~~40~~ 14 days of
26 the order awarding custody. After providing the parties or interested parties
27 notice and opportunity to be heard, the court may determine whether the
28 secretary's placement or proposed placement is contrary to the welfare or
29 in the best interests of the child. In making that determination the court
30 shall consider the health and safety needs of the child and the resources
31 available to meet the needs of children in the custody of the secretary. If
32 the court determines that the placement or proposed placement is contrary
33 to the welfare or not in the best interests of the child, the court shall notify
34 the secretary, who shall then make an alternative placement.

35 (2) The custodian designated under this subsection shall notify the
36 court in writing at least ~~40~~ 14 days prior to any planned placement with a
37 parent. The written notice shall state the basis for the custodian's belief that
38 placement with a parent is no longer contrary to the welfare or best interest
39 of the child. Upon reviewing the notice, the court may allow the custodian
40 to proceed with the planned placement or may set the date for a hearing to
41 determine if the child shall be allowed to return home. If the court sets a
42 hearing on the matter, the custodian shall not return the child home without
43 written consent of the court.

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

4 (4) The court may enter an order restraining any alleged perpetrator
5 of physical, mental or emotional abuse or sexual abuse of the child from
6 residing in the child's home; visiting, contacting, harassing or intimidating
7 the child, other family member or witness; or attempting to visit, contact,
8 harass or intimidate the child, other family member or witness. Such
9 restraining order shall be served by personal service pursuant to subsection
10 (a) of K.S.A. 2011 Supp. 38-2237, and amendments thereto, on any
11 alleged perpetrator to whom the order is directed.

12 (5) The court shall provide a copy of any orders entered within ~~40~~ 14
13 days of entering the order to the custodian designated under this
14 subsection.

15 (e) *Further determinations regarding a child removed from the home.*
16 If custody has been awarded under subsection (d) to a person other than a
17 parent, a permanency plan shall be provided or prepared pursuant to
18 K.S.A. 2011 Supp. 38-2264, and amendments thereto. If a permanency
19 plan is provided at the dispositional hearing, the court may determine
20 whether reintegration is a viable alternative or, if reintegration is not a
21 viable alternative, whether the child should be placed for adoption or a
22 permanent custodian appointed. In determining whether reintegration is a
23 viable alternative, the court shall consider:

24 (1) Whether a parent has been found by a court to have committed
25 one of the following crimes or to have violated the law of another state
26 prohibiting such crimes or to have aided and abetted, attempted, conspired
27 or solicited the commission of one of these crimes: (A) Murder in the first
28 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402,
29 and amendments thereto; (B) murder in the second degree, K.S.A. 21-
30 3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments
31 thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A.
32 2011 Supp. 21-5401, and amendments thereto; (D) voluntary
33 manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp.
34 21-5404, and amendments thereto; or (E) a felony battery that resulted in
35 bodily injury;

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

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

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

42 (5) whether the parents have failed to work diligently toward
43 reintegration;

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

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

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

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

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

26 (2) If the court has reason to believe that a child is before the court
27 due, in whole or in part, to the use or misuse of alcohol or a violation of
28 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, by
29 the child, a parent of the child, or another person responsible for the care
30 of the child, the court may order the child, parent of the child or other
31 person responsible for the care of the child to submit to and complete an
32 alcohol and drug evaluation by a qualified person or agency and comply
33 with any recommendations. If the evaluation is performed by a
34 community-based alcohol and drug safety program certified pursuant to
35 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
36 other person responsible for the care of the child shall pay a fee not to
37 exceed the fee established by that statute. If the court finds that the child
38 and those legally liable for the child's support are indigent, the fee may be
39 waived. In no event shall the fee be assessed against the secretary.

40 (3) If child support has been requested and the parent or parents have
41 a duty to support the child, the court may order one or both parents to pay
42 child support and, when custody is awarded to the secretary, the court shall
43 order one or both parents to pay child support. The court shall determine,

1 for each parent separately, whether the parent is already subject to an order
2 to pay support for the child. If the parent is not presently ordered to pay
3 support for any child who is subject to the jurisdiction of the court and the
4 court has personal jurisdiction over the parent, the court shall order the
5 parent to pay child support in an amount determined under K.S.A. 2011
6 Supp. 38-2277, and amendments thereto. Except for good cause shown,
7 the court shall issue an immediate income withholding order pursuant to
8 K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each parent ordered
9 to pay support under this subsection, regardless of whether a payor has
10 been identified for the parent. A parent ordered to pay child support under
11 this subsection shall be notified, at the hearing or otherwise, that the child
12 support order may be registered pursuant to K.S.A. 2011 Supp. 38-2279,
13 and amendments thereto. The parent shall also be informed that, after
14 registration, the income withholding order may be served on the parent's
15 employer without further notice to the parent and the child support order
16 may be enforced by any method allowed by law. Failure to provide this
17 notice shall not affect the validity of the child support order.

18 Sec. 2. K.S.A. 2011 Supp. 38-2255 and 38-2255b are hereby
19 repealed.

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