

HOUSE BILL No. 2370

By Representatives Lightner, Barnes, Bethell, Dahl, Flaharty, Huebert, Landwehr, Light, Mays, McLeland, Judy Morrison, Pauls, L. Powell, Showalter, Storm and Vickrey

2-7

AN ACT concerning children in need of care; requiring personal service on the child's parent or legal guardian in certain hearings; amending K.S.A. 38-1528, 38-1542 and 38-1543 and repealing the existing sections.

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

Section 1. K.S.A. 38-1528 is hereby amended to read as follows: 38-1528. (a) To the extent possible, when any law enforcement officer takes into custody a child under the age of 18 years, without a court order, the child shall forthwith be delivered to the custody of the child's parent or other custodian unless there are reasonable grounds to believe that such action would not be in the best interests of the child. *If the child is not delivered to the custody of the child's parent or legal guardian and there are no visible signs of physical abuse, the parent or legal guardian shall be notified and given an opportunity to appear personally and discuss the matter with the law enforcement officer.* Except as provided in subsection (b), if the child is not delivered to the custody of the child's parent or other custodian, the child shall forthwith be delivered to a facility or person designated by the secretary or to a court designated shelter facility, court services officer, juvenile intake and assessment worker, licensed attendant care center or other person. If, after delivery of the child to a shelter facility, the person in charge of the shelter facility at that time and the law enforcement officer determine that the child will not remain in the shelter facility, the law enforcement officer shall deliver the child to a juvenile detention facility or other secure facility, designated by the court, where the child shall be detained for not more than 24 hours, excluding Saturdays, Sundays and legal holidays. It shall be the duty of the law enforcement officer to furnish to the county or district attorney, without unnecessary delay, all the information in the possession of the officer pertaining to the child, the child's parents or other persons interested in or likely to be interested in the child and all other facts and circumstances which caused the child to be taken into custody.

(b) When any law enforcement officer takes into custody any child as

1 provided in subsection (c) of K.S.A. 38-1527 and amendments thereto,
2 proceedings shall be initiated in accordance with the provisions of the
3 interstate compact on juveniles, K.S.A. 38-1001 *et seq.* and amendments
4 thereto. Any child taken into custody pursuant to the interstate compact
5 on juveniles may be detained in a juvenile detention facility or other
6 secure facility.

7 (c) Whenever a child under the age of 18 years is taken into custody
8 by a law enforcement officer without a court order and is thereafter
9 placed in the custody of a shelter facility, court services officer, juvenile
10 intake and assessment worker, licensed attendant care center or other
11 person as authorized by this code, the facility or person shall have physical
12 custody and provide care and supervision for the child upon written ap-
13 plication of the law enforcement officer. The application shall state:

14 (1) The name and address of the child, if known;

15 (2) the names and addresses of the child's parents or nearest relatives
16 and persons with whom the child has been residing, if known; and

17 (3) the officer's belief that the child is a child in need of care and that
18 there are reasonable grounds to believe that the circumstances or condi-
19 tion of the child is such that, unless the child is placed in the immediate
20 custody of the shelter facility or other person, it would be harmful to the
21 child.

22 (d) A copy of the application shall be furnished by the facility or
23 person receiving the child to the county or district attorney without un-
24 necessary delay.

25 (e) The shelter facility or other person designated by the court who
26 has custody of the child pursuant to this section shall discharge the child
27 not later than 72 hours following admission, excluding Saturdays, Sundays
28 and legal holidays, unless a court has entered an order pertaining to tem-
29 porary custody or release.

30 (f) In absence of a court order to the contrary, the county or district
31 attorney or the placing law enforcement agency shall have the authority
32 to direct at any time the release of the child.

33 (g) When any law enforcement officer takes into custody any child as
34 provided in subsection (d) of K.S.A. 38-1527, and amendments thereto,
35 the child shall forthwith be delivered to the school in which the child is
36 enrolled, any location designated by the school in which the child is en-
37 rolled to address truancy issues or the child's parent or other custodian.

38 Sec. 2. K.S.A. 38-1542 is hereby amended to read as follows: 38-
39 1542. (a) The court upon verified application may issue *ex parte* an order
40 directing that a child be held in protective custody and, if the child has
41 not been taken into custody, an order directing that the child be taken
42 into custody. The application shall state for each child:

43 (1) The applicant's belief that the child is a child in need of care and

1 that allowing the child to remain in the home is contrary to the welfare
2 of the child or placement is in the best interest of the child and that the
3 child is likely to sustain harm if not immediately afforded protective cus-
4 tody; and

5 (2) the facts which are relied upon to support the application, in-
6 cluding efforts known to the applicant, to maintain the family unit and
7 prevent the unnecessary removal of the child from the child's home, or
8 the specific facts supporting that an emergency exists which threatens the
9 safety of the child.

10 (b) (1) The order of protective custody may be issued only after the
11 court has determined there is probable cause to believe the allegations
12 in the application are true. The order shall remain in effect until the
13 temporary custody hearing provided for in K.S.A. 38-1543, and amend-
14 ments thereto, unless earlier rescinded by the court.

15 (2) No child shall be held in protective custody for more than 72
16 hours, excluding Saturdays, Sundays and legal holidays, unless within the
17 72-hour period a determination is made as to the necessity for temporary
18 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
19 shall be construed to mean that the child must remain in protective cus-
20 tody for 72 hours.

21 (c) Whenever the court determines the necessity for an order of pro-
22 tective custody, the court may place the child in the protective custody
23 of: (1) A parent or other person having custody of the child and may enter
24 a restraining order pursuant to subsection (e); (2) a person, other than
25 the parent or other person having custody, who shall not be required to
26 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
27 tated; (3) a youth residential facility; or (4) the secretary if the child is
28 alleged to be a child in need of care the court may award custody to the
29 secretary. However, if the secretary presents the court with a plan to
30 provide services to a child or family which the court finds will assure the
31 safety of the child, the court may only place the child in the protective
32 custody of the secretary until the court finds the services are in place.
33 The court shall have the authority to require any person or entity agreeing
34 to participate in the plan to perform as set out in the plan. When the
35 child is placed in the protective custody of the secretary, the secretary
36 shall have the discretionary authority to place the child with a parent or
37 to make other suitable placement for the child. When circumstances re-
38 quire, a child in protective custody may be placed in a juvenile detention
39 facility or other secure facility pursuant to an order of protective custody
40 for not to exceed 24 hours, excluding Saturdays, Sundays and legal
41 holidays.

42 (d) The order of protective custody shall be served on the child's
43 parents and any other person having legal custody of the child *in the*

1 *manner prescribed for personal service of a summons.* The order shall
2 prohibit all parties from removing the child from the court's jurisdiction
3 without the court's permission.

4 (e) If the court issues an order of protective custody, the court may
5 also enter an order restraining any alleged perpetrator of physical, sexual,
6 mental or emotional abuse of the child from residing in the child's home;
7 visiting, contacting, harassing or intimidating the child, other family mem-
8 ber or witness; or attempting to visit, contact, harass or intimidate the
9 child, other family member or witness. Such restraining order shall be
10 served on any alleged perpetrator to whom the order is directed.

11 (f) The court shall not enter an order removing a child from the
12 custody of a parent pursuant to this section unless the court first finds
13 from evidence presented by the petitioner that reasonable efforts have
14 been made to maintain the family unit and prevent the unnecessary re-
15 moval of the child from the child's home or that an emergency exists
16 which threatens the safety of the child and that remaining in the home is
17 contrary to the welfare of the child or that immediate placement is in the
18 best interest of the child. Such findings shall be included in any order
19 entered by the court. If the child is placed in the custody of the secretary,
20 the court shall provide the secretary with a written copy of any orders
21 entered for the purpose of documenting these orders upon making the
22 order.

23 Sec. 3. K.S.A. 38-1543 is hereby amended to read as follows: 38-
24 1543. (a) Upon notice and hearing, the court may issue an order directing
25 who shall have temporary custody and may modify the order during the
26 pendency of the proceedings as will best serve the child's welfare.

27 (b) ~~A(1)~~ *Subject to the provisions of subsection (2), a hearing pur-*
28 *suant to this section shall be held within 72 hours, excluding Saturdays,*
29 *Sundays and legal holidays, following a child having been taken into pro-*
30 *protective custody.*

31 (2) *No hearing shall be held under this section unless notice of such*
32 *hearing has been served upon the child's parents and any other person*
33 *having legal custody of the child in the manner prescribed for personal*
34 *service of a summons.*

35 (c) Whenever it is determined that a temporary custody hearing is
36 required, the court shall immediately set the time and place for the hear-
37 ing. Notice of a temporary custody hearing shall be in substantially the
38 following form:

39 (Name of Court)

40 (Caption of Case)

41 NOTICE OF TEMPORARY CUSTODY HEARING
42
43

1 TO:
 2 (Names) (Relationship) (Addresses)
 3 _____
 4 _____
 5 _____

6 On _____, _____, (year), at _____ o'clock _____.
 7 (day) (date)

8 the court will conduct a hearing at _____ to determine if the above named child
 9 or children should be in the temporary custody of some person or agency other than the
 10 parent or other person having legal custody prior to the hearing on the petition filed in the
 11 above captioned case. The court may order one or both parents to pay child support.

12 _____, an attorney, has been appointed as guardian *ad litem* for the child or
 13 children. Each parent or other legal custodian has the right to appear and be heard person-
 14 ally, either with or without an attorney. An attorney will be appointed for a parent who can
 15 show that the parent is not financially able to hire one.

16 Date _____ (year) Clerk of the District Court
 17 by _____
 18 (Seal)

19 REPORT OF SERVICE

20 I certify that I have delivered a true copy of the above notice to the persons above named
 21 in the manner and at the times indicated below:

22 Name	23 Location of Service (other than above)	24 Manner of Service	25 Date	26 Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

27 Date Returned _____, ____ (year)
 28 _____
 29 (Signature)
 30 _____
 31 (Title)

32 (d) Notice of the temporary custody hearing shall be given at least
 33 24 hours prior to the hearing. The court may continue the hearing to
 34 afford the 24 hours prior notice or, with the consent of the party, proceed
 35 with the hearing at the designated time. If an order of temporary custody
 36 is entered and the parent or other person having custody of the child has
 37 not been notified of the hearing, did not appear or waive appearance and
 38 requests a rehearing, the court shall rehear the matter without unnec-
 39 essary delay.

40 (e) ~~Oral notice may be used for giving notice of a temporary custody~~
 41 ~~hearing where there is insufficient time to give written notice. Oral notice~~
 42 ~~is completed upon filing a certificate of oral notice in substantially the~~
 43 ~~following form:~~

(Name of Court)

(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at _____ o'clock _____ m. on _____, _____ (year), to the persons listed, in the manner and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I advised each of the above persons that:

- (1) The hearing is to determine if the above child or children should be in the temporary custody of a person or agency other than a parent;
- (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or children named above;
- (3) each parent or legal custodian has the right to appear and be heard personally either with or without an attorney;
- (4) an attorney will be appointed for a parent who can show that the parent is not financially able to hire an attorney, and
- (5) the court may order one or both parents to pay child support.

 (Signature)

 (Name Printed)

 (Title)

(f) The court may enter an order of temporary custody after determining that: (1) The child is dangerous to self or to others; (2) the child is not likely to be available within the jurisdiction of the court for future proceedings; or (3) the health or welfare of the child may be endangered without further care.

(g) Whenever the court determines the necessity for an order of temporary custody the court may place the child in the temporary custody of: (1) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (h) (g); (2) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated; (3) a youth residential facility; or (4) the secretary if the child is alleged to be a child in need of care, the court may award custody to the secretary. However, if the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the temporary custody of the secretary until the court finds the services are in place.

1 The court shall have the authority to require any person or entity agreeing
2 to participate in the plan to perform as set out in the plan. When the
3 child is placed in the temporary custody of the secretary, the secretary
4 shall have the discretionary authority to place the child with a parent or
5 to make other suitable placement for the child. When circumstances re-
6 quire, a child may be placed in a juvenile detention facility or other secure
7 facility, but the total amount of time that the child may be held in such
8 facility under this section and K.S.A. 38-1542 and amendments thereto
9 shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-
10 days. The order of temporary custody shall remain in effect until modified
11 or rescinded by the court or a disposition order is entered but not ex-
12 ceeding 60 days, unless good cause is shown and stated on the record.

13 ~~(g)~~ (g) If the court issues an order of temporary custody, the court
14 may enter an order restraining any alleged perpetrator of physical, sexual,
15 mental or emotional abuse of the child from residing in the child's home;
16 visiting, contacting, harassing or intimidating the child; or attempting to
17 visit, contact, harass or intimidate the child.

18 ~~(h)~~ (h) The court shall not enter an order removing a child from the
19 custody of a parent pursuant to this section unless the court first finds
20 from evidence presented by the petitioner that reasonable efforts have
21 been made to maintain the family unit and prevent the unnecessary re-
22 moval of the child from the child's home or that an emergency exists
23 which threatens the safety of the child and that remaining in the home is
24 contrary to the welfare of the child or that placement is in the best interest
25 of the child. Such findings shall be included in any order entered by the
26 court. If the child is placed in the custody of the secretary, the court shall
27 provide the secretary with a written copy of any orders entered for the
28 purpose of documenting these orders upon making the order.

29 Sec. 4. K.S.A. 38-1528, 38-1542 and 38-1543 are hereby repealed.

30 Sec. 5. This act shall take effect and be in force from and after its
31 publication in the statute book.

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