

HOUSE BILL No. 2320

By Committee on Corrections and Juvenile Justice

2-12

AN ACT concerning the Kansas code for care of children; relating to children not attending school; dispositions; amending K.S.A. 38-1501 and 38-1563 and K.S.A. 2002 Supp. 38-1502 and repealing the existing sections.

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

Section 1. K.S.A. 38-1501 is hereby amended to read as follows: 38-1501. (a) K.S.A. 38-1501 ~~through 38-1503~~ *et seq.*, and amendments thereto, shall be known as and may be cited as the Kansas code for care of children ~~and~~. This code shall be liberally construed, to the end that each child within its provisions shall receive the care, custody, guidance, control and discipline, preferably in the child's own home, as will best serve the child's welfare and the best interests of the state. All proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state. Proceedings pursuant to this code shall be civil in nature.

(b) *A violation of the compulsory attendance laws of this state shall not constitute the commission of a criminal act.*

Sec. 2. K.S.A. 2002 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) (A) *while under the age of 14 years*, is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto, *except that the court may determine the child to not be a child in need of care*

1 *if the court finds that the child is not attending school due to circum-*
2 *stances that include, but are not limited to, threats directed toward such*
3 *child, fear of personal safety or the presence of an environment that causes*
4 *the child to be frightened; or*

5 (B) *while age 14 years or older, is not attending school as required*
6 *by K.S.A. 72-977 or 72-1111, and amendments thereto, except that the*
7 *court may determine the child to not be a child in need of care if the court*
8 *finds that the child is not attending school due to circumstances that*
9 *include, but are not limited to, threats directed toward such child, fear of*
10 *personal safety or the presence of an environment that causes the child*
11 *to be frightened;*

12 (7) *except in the case of a violation of K.S.A. 41-727, subsection (j)*
13 *of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-*
14 *ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-*
15 *4204a and amendments thereto, does an act which, when committed by*
16 *a person under 18 years of age, is prohibited by state law, city ordinance*
17 *or county resolution but which is not prohibited when done by an adult;*

18 (8) *while less than 10 years of age, commits any act which if done by*
19 *an adult would constitute the commission of a felony or misdemeanor as*
20 *defined by K.S.A. 21-3105 and amendments thereto;*

21 (9) *is willfully and voluntarily absent from the child's home without*
22 *the consent of the child's parent or other custodian;*

23 (10) *is willfully and voluntarily absent at least a second time from a*
24 *court ordered or designated placement, or a placement pursuant to court*
25 *order, if the absence is without the consent of the person with whom the*
26 *child is placed or, if the child is placed in a facility, without the consent*
27 *of the person in charge of such facility or such person's designee;*

28 (11) *has been residing in the same residence with a sibling or another*
29 *person under 18 years of age, who has been physically, mentally or emo-*
30 *tionally abused or neglected, or sexually abused; or*

31 (12) *while less than 10 years of age commits the offense defined in*
32 *K.S.A. 21-4204a and amendments thereto.*

33 (b) "Physical, mental or emotional abuse" means the infliction of
34 physical, mental or emotional injury or the causing of a deterioration of
35 a child and may include, but shall not be limited to, maltreatment or
36 exploiting a child to the extent that the child's health or emotional well-
37 being is endangered.

38 (c) "Sexual abuse" means any act committed with a child which is
39 described in article 35, chapter 21 of the Kansas Statutes Annotated and
40 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
41 thereto.

42 (d) "Parent," when used in relation to a child or children, includes a
43 guardian, conservator and every person who is by law liable to maintain,

1 care for or support the child.

2 (e) “Interested party” means the state, the petitioner, the child, any
3 parent, any grandparent and any person found to be an interested party
4 pursuant to K.S.A. 38-1541 and amendments thereto.

5 (f) “Law enforcement officer” means any person who by virtue of
6 office or public employment is vested by law with a duty to maintain
7 public order or to make arrests for crimes, whether that duty extends to
8 all crimes or is limited to specific crimes.

9 (g) “Youth residential facility” means any home, foster home or struc-
10 ture which provides 24-hour-a-day care for children and which is licensed
11 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

12 (h) “Shelter facility” means any public or private facility or home
13 other than a juvenile detention facility that may be used in accordance
14 with this code for the purpose of providing either temporary placement
15 for the care of children in need of care prior to the issuance of a dispos-
16 sitional order or longer term care under a dispositional order.

17 (i) “Juvenile detention facility” means any secure public or private
18 facility used for the lawful custody of accused or adjudicated juvenile
19 offenders which must not be a jail.

20 (j) “Adult correction facility” means any public or private facility, se-
21 cure or nonsecure, which is used for the lawful custody of accused or
22 convicted adult criminal offenders.

23 (k) “Secure facility” means a facility *for juveniles* which is operated
24 or structured so as to ensure that all entrances and exits from the facility
25 are under the exclusive control of the staff of the facility, whether or not
26 the person being detained has freedom of movement within the perim-
27 eters of the facility, or which relies on locked rooms and buildings, fences
28 or physical restraint in order to control behavior of its residents. No secure
29 facility shall be in a city or county jail.

30 (l) “Ward of the court” means a child over whom the court has ac-
31 quired jurisdiction by the filing of a petition pursuant to this code and
32 who continues subject to that jurisdiction until the petition is dismissed
33 or the child is discharged as provided in K.S.A. 38-1503 and amendments
34 thereto.

35 (m) “Custody,” whether temporary, protective or legal, means the
36 status created by court order or statute which vests in a custodian,
37 whether an individual or an agency, the right to physical possession of
38 the child and the right to determine placement of the child, subject to
39 restrictions placed by the court.

40 (n) “Placement” means the designation by the individual or agency
41 having custody of where and with whom the child will live.

42 (o) “Secretary” means the secretary of social and rehabilitation
43 services.

1 (p) “Relative” means a person related by blood, marriage or adoption
2 but, when referring to a relative of a child’s parent, does not include the
3 child’s other parent.

4 (q) “Court-appointed special advocate” means a responsible adult
5 other than an attorney guardian *ad litem* who is appointed by the court
6 to represent the best interests of a child, as provided in K.S.A. 38-1505a
7 and amendments thereto, in a proceeding pursuant to this code.

8 (r) “Multidisciplinary team” means a group of persons, appointed by
9 the court or by the state department of social and rehabilitation services
10 under K.S.A. 38-1523a and amendments thereto, which has knowledge
11 of the circumstances of a child in need of care. A multidisciplinary team
12 may serve as a community services team.

13 (s) “Jail” means:

14 (1) An adult jail or lockup; or

15 (2) a facility in the same building or on the same grounds as an adult
16 jail or lockup, unless the facility meets all applicable standards and licen-
17 sure requirements under law and there is (A) total separation of the ju-
18 venile and adult facility spatial areas such that there could be no haphaz-
19 ard or accidental contact between juvenile and adult residents in the
20 respective facilities; (B) total separation in all juvenile and adult program
21 activities within the facilities, including recreation, education, counseling,
22 health care, dining, sleeping, and general living activities; and (C) separate
23 juvenile and adult staff, including management, security staff and direct
24 care staff such as recreational, educational and counseling.

25 (t) “Kinship care” means the placement of a child in the home of the
26 child’s relative or in the home of another adult with whom the child or
27 the child’s parent already has a close emotional attachment.

28 (u) “Juvenile intake and assessment worker” means a responsible
29 adult authorized to perform intake and assessment services as part of the
30 intake and assessment system established pursuant to K.S.A. 75-7023, and
31 amendments thereto.

32 (v) “Abandon” means to forsake, desert or cease providing care for
33 the child without making appropriate provisions for substitute care.

34 (w) “Permanent guardianship” means a judicially created relationship
35 between child and caretaker which is intended to be permanent and self-
36 sustaining without ongoing state oversight or intervention by the secre-
37 tary. The permanent guardian stands in loco parentis and exercises all the
38 rights and responsibilities of a parent. A permanent guardian may be
39 appointed after termination of parental rights or without termination of
40 parental rights, if the parent consents and agrees to the appointment of
41 a permanent guardian. Upon appointment of a permanent guardian, the
42 child shall be discharged from the custody of the secretary.

43 (x) “Aggravated circumstances” means the abandonment, torture,

1 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

2 (y) “Permanency hearing” means a notice and opportunity to be
3 heard is provided to interested parties, foster parents, preadoptive parents
4 or relatives providing care for the child. The court, after consideration of
5 the evidence, shall determine whether progress toward the case plan goal
6 is adequate or reintegration is a viable alternative, or if the case should
7 be referred to the county or district attorney for filing of a petition to
8 terminate parental rights or to appoint a permanent guardian.

9 (z) “Extended out of home placement” means a child has been in the
10 custody of the secretary and placed with neither parent for 15 of the most
11 recent 22 months beginning 60 days after the date at which a child in the
12 custody of the secretary was removed from the home.

13 (aa) “Educational institution” means all schools at the elementary and
14 secondary levels.

15 (bb) “Educator” means any administrator, teacher or other profes-
16 sional or paraprofessional employee of an educational institution who has
17 exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03 and
18 amendments thereto.

19 (cc) “Neglect” means acts or omissions by a parent, guardian or per-
20 son responsible for the care of a child resulting in harm to a child or
21 presenting a likelihood of harm and the acts or omissions are not due
22 solely to the lack of financial means of the child’s parents or other cus-
23 todian. Neglect may include but shall not be limited to:

24 (1) Failure to provide the child with food, clothing or shelter neces-
25 sary to sustain the life or health of the child;

26 (2) failure to provide adequate supervision of a child or to remove a
27 child from a situation which requires judgment or actions beyond the
28 child’s level of maturity, physical condition or mental abilities and that
29 results in bodily injury or a likelihood of harm to the child; or

30 (3) failure to use resources available to treat a diagnosed medical
31 condition if such treatment will make a child substantially more com-
32 fortable, reduce pain and suffering, correct or substantially diminish a
33 crippling condition from worsening. A parent legitimately practicing re-
34 ligious beliefs who does not provide specified medical treatment for a
35 child because of religious beliefs shall not for that reason be considered
36 a negligent parent; however, this exception shall not preclude a court from
37 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
38 amendments thereto.

39 (dd) “Community services team” means a group of persons, ap-
40 pointed by the court or by the state department of social and rehabilita-
41 tion services for the purpose of assessing the needs of a child who is
42 alleged to be a child in need of care.

43 Sec. 3. K.S.A. 38-1563 is hereby amended to read as follows: 38-

1 1563. (a) After consideration of any evidence offered relating to disposi-
2 tion, the court may retain jurisdiction and place the child in the custody
3 of the child's parent subject to terms and conditions which the court
4 prescribes to assure the proper care and protection of the child, including
5 supervision of the child and the parent by a court services officer, or may
6 order the child and the parent to participate in programs operated by the
7 secretary or another appropriate individual or agency. The terms and
8 conditions may require any special treatment or care which the child
9 needs for the child's physical, mental or emotional health.

10 (b) The duration of any period of supervision or other terms or condi-
11 tions shall be for an initial period of no more than 12 months. The
12 court, at the expiration of that period, upon a hearing and for good cause
13 shown, may make successive extensions of the supervision or other terms
14 or conditions for up to 12 months at a time.

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

22 (d) If the court finds that placing the child in the custody of a parent
23 will not assure protection from physical, mental or emotional abuse or
24 neglect or sexual abuse or is contrary to the welfare of the child or that
25 placement would be in the best interests of the child, the court shall enter
26 an order awarding custody of the child, until the further order of the
27 court, to one of the following:

28 (1) A relative of the child or a person with whom the child has close
29 emotional ties;

30 (2) any other suitable person;

31 (3) a shelter facility; or

32 (4) the secretary.

33 If the child is adjudged to be a child in need of care, the court shall
34 not place the child in the custody of the secretary if the court has received
35 from the secretary; written documentation of the services ~~and/or~~ *or* com-
36 munity services plan, *or both*, offered or delivered to prevent the need
37 for such custody unless the court finds that the services documented by
38 the secretary are insufficient to protect the safety of the child and that
39 being in the custody of the parent with such services in place is contrary
40 to the welfare or that placement is in the best interests of the child. The
41 court shall have the authority to require any person or entity agreeing to
42 participate in the plan to perform as set out in the plan. The secretary
43 shall present to the court in writing the specific actions taken to maintain

1 the family unit and prevent the unnecessary removal of the child from
2 the child's home.

3 In making such a custody order, the court shall give preference, to the
4 extent that the court finds it is in the best interests of the child, first to
5 granting custody to a relative of the child and second to granting custody
6 of the child to a person with whom the child has close emotional ties. If
7 the court has awarded legal custody based on the finding specified by this
8 subsection, the legal custodian shall not return the child to the home of
9 that parent without the written consent of the court.

10 (e) When the custody of the child is awarded to the secretary:

11 (1) The court may recommend to the secretary where the child
12 should be placed.

13 (2) The secretary shall notify the court in writing of any placement
14 of the child or, within 10 days of the order awarding the custody of the
15 child to the secretary, any proposed placement of the child, whichever
16 occurs first.

17 (3) The court may determine if such placement is contrary to the
18 welfare or in the best interests of the child, and if the court determines
19 that such placement is not in the best interests of the child, the court
20 shall notify the secretary who shall then make an alternative placement
21 subject to the procedures established in this paragraph. In determining
22 if such placement is in the best interests of the child, the court, after
23 providing the parties with an opportunity to be heard, shall consider the
24 health and safety needs of the child and the resources available to meet
25 the needs of children in the custody of the secretary.

26 (4) When the secretary provides the court with a plan to provide
27 services to a child or family which the court finds is in place and which
28 will assure the safety of the child, the court shall approve the return of
29 the child to the child's home. The court shall have the authority to require
30 any person or entity agreeing to participate in the plan to perform as set
31 out in the plan.

32 (f) If custody of a child is awarded under this section to a person
33 other than the child's parent, the court may grant any individual reason-
34 able rights to visit the child upon motion of the individual and a finding
35 that the visitation rights would be in the best interests of the child.

36 (g) If the court issues an order of custody pursuant to this section,
37 the court may enter an order restraining any alleged perpetrator of phys-
38 ical, sexual, mental or emotional abuse of the child from residing in the
39 child's home; visiting, contacting, harassing or intimidating the child,
40 other family member or witness; or attempting to visit, contact, harass or
41 intimidate the child, other family member or witness.

42 (h) The court shall not enter an order removing a child from the
43 custody of a parent pursuant to this section unless the court first finds

1 from evidence presented by the petitioner that reasonable efforts have
2 been made to maintain the family unit and prevent the unnecessary re-
3 moval of the child from the child's home or that reasonable efforts are
4 not necessary because reintegration is not a viable alternative; or that an
5 emergency exists which threatens the safety of the child and that allowing
6 the child to remain in the home is contrary to the welfare of the child or
7 that placement would be in the best interest of the child. If the child is
8 placed in the custody of the secretary, the court shall provide the secretary
9 with a copy of any orders entered for the purpose of documenting these
10 orders within 10 days of making the order. Reintegration may not be a
11 viable alternative when the: (1) Parent has been found by a court to have
12 committed murder in the first degree, K.S.A. 21-3401, and amendments
13 thereto, murder in the second degree, K.S.A. 21-3402, and amendments
14 thereto, capital murder, K.S.A. 21-3439, and amendments thereto, vol-
15 untary manslaughter, K.S.A. 21-3403, and amendments thereto, or vio-
16 lated a law of another state which prohibits such murder or manslaughter
17 of a child; (2) parent aided or abetted, attempted, conspired or solicited
18 to commit such murder or voluntary manslaughter of a child as provided
19 in subsection (h)(1); (3) parent committed a felony battery that resulted
20 in bodily injury to the child or another child; (4) parent has subjected the
21 child or another child to aggravated circumstances as defined in K.S.A.
22 38-1502, and amendments thereto; (5) parental rights of the parent to
23 another child have been terminated involuntarily or (6) the child has been
24 in extended out of home placement as defined in K.S.A. 38-1502, and
25 amendments thereto. Such findings shall be included in any order entered
26 by the court.

27 (i) In addition to or in lieu of any other order authorized by this
28 section, if a child is adjudged to be a child in need of care by reason of a
29 violation of the uniform controlled substances act (K.S.A. 65-4101 *et seq.*,
30 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
31 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
32 order the child to submit to and complete an alcohol and drug evaluation
33 by a community-based alcohol and drug safety action program certified
34 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
35 to exceed the fee established by that statute for such evaluation. If the
36 court finds that the child and those legally liable for the child's support
37 are indigent, the fee may be waived. In no event shall the fee be assessed
38 against the secretary or the department of social and rehabilitation
39 services.

40 (j) In addition to any other order authorized by this section, if child
41 support has been requested and the parent or parents have a duty to
42 support the child, the court may order one or both parents to pay child
43 support and, when custody is awarded to the secretary, the court shall

1 order one or both parents to pay child support. The court shall determine,
2 for each parent separately, whether the parent is already subject to an
3 order to pay support for the child. If the parent is not presently ordered
4 to pay support for any child who is a ward of the court and the court has
5 personal jurisdiction over the parent, the court shall order the parent to
6 pay child support in an amount determined under K.S.A. 38-1595, and
7 amendments thereto. Except for good cause shown, the court shall issue
8 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
9 *seq.*, and amendments thereto, for each parent ordered to pay support
10 under this subsection, regardless of whether a payor has been identified
11 for the parent. A parent ordered to pay child support under this subsec-
12 tion shall be notified, at the hearing or otherwise, that the child support
13 order may be registered pursuant to K.S.A. 38-1597, and amendments
14 thereto. The parent shall also be informed that, after registration, the
15 income withholding order may be served on the parent's employer with-
16 out further notice to the parent and the child support order may be en-
17 forced by any method allowed by law. Failure to provide this notice shall
18 not affect the validity of the child support order.

19 *(k) If a child is found to be a child in need of care pursuant to sub-*
20 *section (a)(6)(B) of K.S.A. 38-1502, and amendments thereto, in addition*
21 *to other authorized dispositions, the court may: (1) Place the child under*
22 *a house arrest program administered by the court pursuant to K.S.A. 21-*
23 *4603b, and amendments thereto;*

24 *(2) order the parent or guardian to participate in parenting classes;*

25 *(3) order the child to participate in a program of education offered*
26 *by the school district in which the child resides including placement in*
27 *an alternative education program approved by the local board of*
28 *education;*

29 *(4) suspend the child's driver's license or privilege to operate a motor*
30 *vehicle on the streets and highways of this state. The duration of the*
31 *suspension ordered by the court shall be for a definite time period to be*
32 *determined by the court. Upon suspension of a license pursuant to this*
33 *subsection, the court shall require the child to surrender the license to the*
34 *court. The court shall transmit the license to the division of motor vehicles*
35 *of the department of revenue, to be retained until the period of suspension*
36 *expires. At that time, the licensee may apply to the division for return of*
37 *the license. If the license has expired, the child may apply for a new*
38 *license, which shall be issued promptly upon payment of the proper fee*
39 *and satisfaction of other conditions established by law for obtaining a*
40 *license unless another suspension or revocation of the child's privilege to*
41 *operate a motor vehicle is in effect. As used in this subsection, "highway"*
42 *and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473,*
43 *and amendments thereto. Any child who does not have a driver's license*

1 *may have such child's driving privileges revoked. No Kansas driver's li-*
2 *cence shall be issued to a child whose driving privileges have been revoked*
3 *pursuant to this section for a definite time period to be determined by the*
4 *court;*

5 *(5) in lieu of suspending the driver's license or privilege to operate a*
6 *motor vehicle on the highways of this state of any child as provided in*
7 *subsection (4), the court may enter an order which places conditions on*
8 *such child's privilege of operating a motor vehicle on the streets and high-*
9 *ways of this state, a certified copy of which such child shall be required*
10 *to carry any time such child is operating a motor vehicle on the streets*
11 *and highways of this state. Any such order shall prescribe the duration*
12 *of the conditions imposed and shall specify that such duration shall be for*
13 *a definite time period to be determined by the court. Upon entering an*
14 *order restricting a child's license as provided in this subsection, the court*
15 *shall require such child to surrender such child's driver's license to the*
16 *court. The court shall transmit the license to the division of vehicles, to-*
17 *gether with a copy of the order. Upon receipt, the division of vehicles shall*
18 *issue without charge a driver's license which shall indicate on its face that*
19 *conditions have been imposed on such child's privilege of operating a*
20 *motor vehicle and that a certified copy of the order imposing such con-*
21 *ditions is required to be carried by the child for whom the license was*
22 *issued any time such child is operating a motor vehicle on the streets and*
23 *highways of this state. If the child is a nonresident, the court shall cause*
24 *a copy of the order to be transmitted to the division and the division shall*
25 *forward a copy of it to the motor vehicle administrator of such child's*
26 *state of residence. Such court shall furnish to any child whose driver's*
27 *license has had conditions imposed on it under this section a copy of the*
28 *order, which shall be recognized as a valid Kansas driver's license until*
29 *such time as the division shall issue the restricted license provided for in*
30 *this subsection. Upon expiration of the period of time for which conditions*
31 *are imposed pursuant to this subsection, the licensee may apply to the*
32 *division for the return of the license previously surrendered by such li-*
33 *cencee. In the event such license has expired, such child may apply to the*
34 *division for a new license, which shall be issued immediately by the di-*
35 *vision upon payment of the proper fee and satisfaction of the other con-*
36 *ditions established by law, unless such child's privilege to operate a motor*
37 *vehicle on the streets and highways of this state has been suspended or*
38 *revoked prior thereto. If any child shall violate any of the conditions*
39 *imposed under this subsection, such child's driver's license or privilege to*
40 *operate a motor vehicle on the streets and highways of this state shall be*
41 *revoked for a period as determined by the court in which such child is*
42 *convicted of violating such conditions; or*

43 *(6) may order the child or parent or guardian or combination thereof*

1 to pay a fine of not exceeding \$500.

2 New Sec. 4. (a) *Valid court order*. During proceedings under this
3 code, the court may enter an order directing a child, who has been ad-
4 judicated a child in need of care pursuant to subsection (a)(6)(B) of K.S.A.
5 38-1502, and amendments thereto, to attend school without any unex-
6 cused absences, or comply fully with conditions of house arrest, if:

7 (1) The court makes a finding that the child has been adjudicated to
8 be a child in need of care pursuant to subsection (a)(6)(B) of K.S.A. 38-
9 1502, and amendments thereto, and the court determines that the child
10 has failed to attend school as required by K.S.A. 72-977 or 72-1111, and
11 amendments thereto, since the child's adjudication, or violated terms of
12 house arrest imposed pursuant to subsection (k)(1) of K.S.A. 38-1563,
13 and amendments thereto;

14 (2) the child and the child's guardian ad litem are present before the
15 court at the time the order is entered; and

16 (3) the child and the child's guardian ad litem are given adequate and
17 fair warning, both orally and in writing, of the consequences of violation
18 of the order and copy of such warning is recorded in the official file of
19 the case.

20 (b) *Application*. Any person may file with the court a verified appli-
21 cation for a determination that a child has violated an order entered pur-
22 suant to subsection (a) and for an order authorizing the holding of such
23 child in a secure facility as provided by this section. Such application shall
24 state the applicant's belief that the child has violated a valid court order
25 entered pursuant to subsection (a) and the specific facts which are relied
26 upon to support the belief.

27 (c) *Ex parte order*. Upon the filing of an application in accordance
28 with subsection (b), the court may enter *ex parte* an order directing that
29 the child be taken into custody and held in a secure facility designated
30 by the court if the court determines that there is probable cause to believe
31 the allegations in the application. The order shall remain in effect for not
32 more than 24 hours following the child being taken into custody. The
33 order shall be served on the child's parents, any legal custodian of the
34 child and the child's guardian ad litem.

35 (d) *Preliminary hearing*. Within 24 hours following a child being
36 taken into custody pursuant to an order issued under subsection (c), the
37 court shall hold a hearing to determine whether the child admits or denies
38 the allegations of the application and, if the child denies such allegations,
39 whether there is probable cause to hold the child in a secure facility
40 pending a hearing on the application pursuant to subsection (e). Notice
41 of the time and place of the preliminary hearing shall be given orally or
42 in writing to the child's parents, any legal custodian of the child and the
43 child's guardian ad litem. At the hearing, the child shall have the right to:

1 (1) Have in writing the alleged violation and the facts relied upon in the
2 application;

3 (2) a guardian ad litem pursuant to K.S.A. 38-1505, and amendments
4 thereto; and

5 (3) the right to confront and present witnesses. If, upon the hearing,
6 the court finds that the child admits the allegations of the application, the
7 court shall proceed without delay to hold a hearing on the application
8 pursuant to subsection (e). If, upon the hearing, the court finds that the
9 child denies the allegations of the application, the court may enter an
10 order directing that the child be held in a secure facility pending a hearing
11 pursuant to subsection (e) if the court finds that there is probable cause
12 to believe that the child has violated a valid court order entered pursuant
13 to subsection (a) and that secure detention of the child is necessary for
14 the protection of the child or to assure the appearance of the child at the
15 hearing on the application pursuant to subsection (e).

16 (e) *Hearing on violation of order; authorization.* The court shall hold
17 a hearing on an application filed pursuant to subsection (b) within 24
18 hours following the child being taken into custody, if the child admits the
19 allegations of the application, or within 72 hours following the child being
20 taken into custody, if secure detention of the child is ordered pursuant
21 to subsection (d). Notice of the time and place of such hearing shall be
22 given orally or in writing to the child's parents, any legal custodian of the
23 child and the child's guardian ad litem. Upon such hearing, the court may
24 enter an order awarding custody of the child to: (1) A parent;

25 (2) a person other than the parent or other person having custody,
26 who shall not be required to be licensed under article 5 of chapter 65 of
27 the Kansas Statutes Annotated, and amendments thereto;

28 (3) a youth residential facility; or

29 (4) the secretary, if the secretary does not already have legal custody
30 of the child, and authorizing the custodian to place the child in a secure
31 facility;

32 (A) Determines that the child has been adjudicated to be a child in
33 need of care pursuant to subsection (a)(6)(B) of K.S.A. 38-1502, and
34 amendments thereto;

35 (B) determines that the child has violated a valid court order entered
36 pursuant to subsection (a);

37 (C) determines that the child has been provided at the hearing with
38 the right to: (i) Have the alleged violation in writing and served upon the
39 child in a reasonable time before the hearing;

40 (ii) a hearing before the court on the issue of placement in a secure
41 facility;

42 (iii) an explanation of the nature and consequences of the proceeding;

43 (iv) a guardian ad litem pursuant to K.S.A. 38-1505, and amendments

1 thereto;

2 (v) confront and present witnesses;

3 (vi) have a transcript or record of the proceedings; and

4 (vii) appeal.

5 (D) determines the reasons for the child's behavior and determines
6 whether all dispositions other than secure confinement have been ex-
7 hausted or are clearly inappropriate, based on a written report submitted
8 by the secretary, if the child is in the custody of the secretary, or submitted
9 by a public agency independent of the court and law enforcement, if the
10 child is in the custody of someone other than the secretary that reviews
11 the behavior of the child and the circumstances under which the child
12 was brought before the court and made subject to such order. The au-
13 thorization to place a child in a secure facility pursuant to this subsection
14 shall expire 60 days, including Saturdays, Sundays and legal holidays, after
15 it is issued. The court may grant extensions of such authorization for two
16 additional periods not exceeding 60 days, including Saturdays, Sundays
17 and legal holidays, upon rehearing pursuant to K.S.A. 38-1564, and
18 amendments thereto. Payment by the secretary to a secure facility for
19 child care services provided pursuant to this subsection shall be paid only
20 upon receipt by the secretary of a copy of a valid court order.

21 (f) *Limitations on facilities used.* Nothing in this section shall author-
22 ize placement of a child in an adult jail or lockup. Secure placement is
23 limited to secure facilities.

24 (g) *Time limits, computation.* Except as otherwise specifically pro-
25 vided by subsection (e), Saturdays, Sundays and legal holidays shall not
26 be counted in computing any time limit imposed by this section.

27 (h) The child's parent or parents may be assessed the costs of place-
28 ment in a secure facility for any child placed pursuant to this section.
29 These costs may be assessed directly as costs by the court, or through an
30 order of child support, or through other means as approved by the court.

31 (i) This section shall be part of and supplemental to the Kansas code
32 for care of children.

33 Sec. 5. K.S.A. 38-1501 and 38-1563 and K.S.A. 2002 Supp. 38-1502
34 are hereby repealed.

35 Sec. 6. This act shall take effect and be in force from and after its
36 publication in the statute book.

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