

HOUSE BILL No. 2354

By Representatives Huy, Barbieri-Lightner, Dahl, DeCastro, Faber, Goico, Huebert, Hutchins, E. Johnson, Kauffman, P. Long, McCreary, McLeland, Merrick, F. Miller, Judy Morrison, Myers, Novascone, Osborne, Ostmeyer, Patterson, Powell, Powers, Schwab, Shultz, Siegfried and D. Williams

2-12

AN ACT concerning children in need of care; relating to family preservation; relating to records and reports; amending K.S.A. 38-1508, 38-1542, 38-1543 and 38-1563 and K.S.A. 2002 Supp. 38-1507 and repealing the existing sections.

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

New Section 1. Annually, on or before the first day of the regular session of the legislature, the secretary of the department of social and rehabilitation services shall prepare and submit a report to the legislature concerning family preservation services. Such report shall include statistics concerning the number of referrals for family preservation services; the outcome of all such referrals; the number and age of such children referred; the number of families; the number of family members; the number of successful family preservations, defined as a child not removed from the home and remaining with a parent or parents for a period of 12 months after completion of the program; the number of failures including a brief description of why the child or children were removed from the home; the number of children in the department of social and rehabilitation services custody; and the number of children removed from the home. The department of social and rehabilitation services shall establish by rules and regulations the types of services that shall be available for family preservation. Such services shall include family mediation and the department assisting the abilities of families and children to resolve problems within the family. Funds for these services shall be derived from the family services and community intervention fund established in K.S.A. 38-1599, and amendments thereto.

Sec. 2. K.S.A. 2002 Supp. 38-1507 is hereby amended to read as follows: 38-1507. (a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the

1 department of social and rehabilitation services, a law enforcement
2 agency or any juvenile intake and assessment worker shall be kept con-
3 fidential except: (1) To those persons or entities with a need for infor-
4 mation that is directly related to achieving the purposes of this code, or
5 (2) upon an order of a court of competent jurisdiction pursuant to a
6 determination by the court that disclosure of the reports and records is
7 in the best interests of the child or are necessary for the proceedings
8 before the court, or both, and are otherwise admissible in evidence. Such
9 access shall be limited to in camera inspection unless the court otherwise
10 issues an order specifying the terms of disclosure.

11 (b) The provisions of subsection (a) shall not prevent disclosure of
12 information to an educational institution or to individual educators about
13 a pupil specified in subsection (a) of K.S.A. 72-89b03 and amendments
14 thereto.

15 (c) When a report is received by the department of social and reha-
16 bilitation services, a law enforcement agency or any juvenile intake and
17 assessment worker which indicates a child may be in need of care, the
18 following persons and entities shall have a free exchange of information
19 between and among them:

- 20 (1) The department of social and rehabilitation services;
- 21 (2) the commissioner of juvenile justice;
- 22 (3) the law enforcement agency receiving such report;
- 23 (4) members of a court appointed multidisciplinary team;
- 24 (5) an entity mandated by federal law or an agency of any state au-
25 thorized to receive and investigate reports of a child known or suspected
26 to be in need of care;
- 27 (6) a military enclave or Indian tribal organization authorized to re-
28 ceive and investigate reports of a child known or suspected to be in need
29 of care;
- 30 (7) a county or district attorney;
- 31 (8) a court services officer who has taken a child into custody pursuant
32 to K.S.A. 38-1527, and amendments thereto;
- 33 (9) a guardian ad litem appointed for a child alleged to be in need of
34 care;
- 35 (10) an intake and assessment worker;
- 36 (11) any community corrections program which has the child under
37 court ordered supervision;
- 38 (12) the department of health and environment or persons authorized
39 by the department of health and environment pursuant to K.S.A. 65-512,
40 and amendments thereto, for the purpose of carrying out responsibilities
41 relating to licensure or registration of child care providers as required by
42 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
43 thereto; and

1 (13) members of a duly appointed community services team.

2 (d) The following persons or entities shall have access to information,
3 records or reports received by the department of social and rehabilitation
4 services, a law enforcement agency or any juvenile intake and assessment
5 worker. Access shall be limited to information reasonably necessary to
6 carry out their lawful responsibilities to maintain their personal safety and
7 the personal safety of individuals in their care or to diagnose, treat, care
8 for or protect a child alleged to be in need of care.

9 (1) A child named in the report or records.

10 (2) A parent or other person responsible for the welfare of a child,
11 or such person's legal representative.

12 (3) A court-appointed special advocate for a child, a citizen review
13 board or other advocate which reports to the court.

14 (4) A person licensed to practice the healing arts or mental health
15 profession in order to diagnose, care for, treat or supervise: (A) A child
16 whom such service provider reasonably suspects may be in need of care;
17 (B) a member of the child's family; or (C) a person who allegedly abused
18 or neglected the child.

19 (5) A person or entity licensed or registered by the secretary of health
20 and environment or approved by the secretary of social and rehabilitation
21 services to care for, treat or supervise a child in need of care. In order to
22 assist a child placed for care by the secretary of social and rehabilitation
23 services in a foster home or child care facility, the secretary shall provide
24 relevant information to the foster parents or child care facility prior to
25 placement and as such information becomes available to the secretary.

26 (6) A coroner or medical examiner when such person is determining
27 the cause of death of a child.

28 (7) The state child death review board established under K.S.A. 22a-
29 243, and amendments thereto.

30 (8) A prospective adoptive parent prior to placing a child in their care.

31 (9) The department of health and environment or person authorized
32 by the department of health and environment pursuant to K.S.A. 65-512,
33 and amendments thereto, for the purpose of carrying out responsibilities
34 relating to licensure or registration of child care providers as required by
35 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
36 thereto.

37 (10) The state protection and advocacy agency as provided by sub-
38 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
39 74-5515, and amendments thereto.

40 (11) Any educational institution to the extent necessary to enable the
41 educational institution to provide the safest possible environment for its
42 pupils and employees.

43 (12) Any educator to the extent necessary to enable the educator to

1 protect the personal safety of the educator and the educator's pupils.

2 (13) The secretary of social and rehabilitation services.

3 (14) A law enforcement agency.

4 (15) A juvenile intake and assessment worker.

5 (16) The commissioner of juvenile justice.

6 (e) Information from a record or report of a child in need of care
7 shall be available to members of the standing house or senate committee
8 on judiciary, house committee on appropriations, senate committee on
9 ways and means; *and* legislative post audit committee ~~and joint committee~~
10 ~~on children and families~~, carrying out such member's or committee's of-
11 ficial functions in accordance with K.S.A. 75-4319 and amendments
12 thereto, in a closed or executive meeting. Except in limited conditions
13 established by $\frac{2}{3}$ of the members of such committee, records and reports
14 received by the committee shall not be further disclosed. *Further, if in-*
15 *dividual members of the legislature are given written authority by the*
16 *parents or guardian of the child, the department of social and rehabili-*
17 *tation services shall allow the legislator to review and copy the file and*
18 *records concerning the child. Such review and copying shall take place*
19 *within 10 business days of the request and shall be at a location requested*
20 *by the legislator. Prior to reviewing and copying the file and records, the*
21 *legislator shall be required to sign a form stating the confidentiality laws*
22 *governing the file and records and the penalties for further release of the*
23 *information. Unauthorized disclosure may subject such member to dis-*
24 *cipline or censure from the house of representatives or senate.*

25 (f) Nothing in this section shall be interpreted to prohibit the secre-
26 tary of social and rehabilitation services from summarizing the outcome
27 of department actions regarding a child alleged to be a child in need of
28 care to a person having made such report.

29 (g) Disclosure of information from reports or records of a child in
30 need of care to the public shall be limited to confirmation of factual details
31 with respect to how the case was handled that do not violate the privacy
32 of the child, if living, or the child's siblings, parents or guardians. Further,
33 confidential information may be released to the public only with the ex-
34 press written permission of the individuals involved or their representa-
35 tives or upon order of the court having jurisdiction upon a finding by the
36 court that public disclosure of information in the records or reports is
37 necessary for the resolution of an issue before the court.

38 (h) Nothing in this section shall be interpreted to prohibit a court of
39 competent jurisdiction from making an order disclosing the findings or
40 information pursuant to a report of alleged or suspected child abuse or
41 neglect which has resulted in a child fatality or near fatality if the court
42 determines such disclosure is necessary to a legitimate state purpose. In
43 making such order, the court shall give due consideration to the privacy

1 of the child, if, living, or the child's siblings, parents or guardians.

2 (i) Information authorized to be disclosed in subsections (d) through
3 (g) shall not contain information which identifies a reporter of a child in
4 need of care.

5 (j) Records or reports authorized to be disclosed in this section shall
6 not be further disclosed, except that the provisions of this subsection shall
7 not prevent disclosure of information to an educational institution or to
8 individual educators about a pupil specified in subsection (a) of K.S.A.
9 72-89b03 and amendments thereto.

10 (k) Anyone who participates in providing or receiving information
11 without malice under the provisions of this section shall have immunity
12 from any civil liability that might otherwise be incurred or imposed. Any
13 such participant shall have the same immunity with respect to participa-
14 tion in any judicial proceedings resulting from providing or receiving
15 information.

16 (l) No individual, association, partnership, corporation or other entity
17 shall willfully or knowingly disclose, permit or encourage disclosure of
18 the contents of records or reports concerning a child in need of care
19 received by the department of social and rehabilitation services, a law
20 enforcement agency or a juvenile intake and assessment worker except
21 as provided by this code. Violation of this subsection is a class B
22 misdemeanor.

23 Sec. 3. K.S.A. 38-1508 is hereby amended to read as follows: 38-
24 1508. All records and reports concerning child abuse or neglect received
25 by law enforcement agencies shall be kept separate from all other records
26 and shall not be disclosed to anyone except:

27 (a) The judge and members of the court staff designated by the judge
28 of the court having the child before it in any proceedings;

29 (b) the guardian *ad litem* and the parties to the proceedings and their
30 attorneys, subject to the restrictions imposed by subsection (a)(2)(C) of
31 K.S.A. 38-1507 and amendments thereto;

32 (c) the department of social and rehabilitation services;

33 (d) any individual, or public or private agency authorized by a prop-
34 erly constituted authority to diagnose, care for, treat or supervise a child
35 who is the subject of a report or record of child abuse or neglect and
36 specifically includes the following: Physicians, psychiatrists, nurses, nurse
37 practitioners, psychologists, licensed social workers, child development
38 specialists, physician assistants, community mental health workers, alco-
39 hol and drug abuse counselors, and licensed or registered child care pro-
40 viders. Teachers, administrators and school paraprofessionals shall have
41 access but shall not copy materials in the file;

42 (e) law enforcement officers or county or district attorneys or their
43 staff when necessary for the discharge of their official duties in investi-

1 gating or prosecuting a report of known or suspected child abuse or
2 neglect;

3 (f) any member of the standing house or senate committee on judi-
4 ciary, house committee on appropriations, senate committee on ways and
5 means, legislative post audit committee and joint committee on children
6 and families, carrying out such member's or committee's official func-
7 tions. *Further, if individual members of the legislature are given written*
8 *authority by the parents or guardian of the child, the law enforcement*
9 *agency shall allow the legislator to review and copy the records and re-*
10 *ports concerning the child. Such review and copying shall take place*
11 *within 10 business days of the request and shall be at a location requested*
12 *by the legislator. Prior to reviewing and copying the records and reports,*
13 *the legislator shall be required to sign a form stating the confidentiality*
14 *laws governing the file and records and the penalties for further release*
15 *of the information; and*

16 (g) any juvenile intake and assessment worker.

17 Sec. 4. K.S.A. 35-1542 is hereby amended to read as follows: 38-
18 1542. (a) The court upon verified application may issue *ex parte* an order
19 directing that a child be held in protective custody and, if the child has
20 not been taken into custody, an order directing that the child be taken
21 into custody. The application shall state for each child:

22 (1) The applicant's belief that the child is a child in need of care and
23 that allowing the child to remain in the home is contrary to the welfare
24 of the child or placement is in the best interest of the child and that the
25 child is likely to sustain harm if not immediately afforded protective cus-
26 tody; and

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

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

37 (2) No child shall be held in protective custody for more than 72
38 hours, excluding Saturdays, Sundays and legal holidays, unless within the
39 72-hour period a determination is made as to the necessity for temporary
40 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
41 shall be construed to mean that the child must remain in protective cus-
42 tody for 72 hours.

43 (c) Whenever the court determines the necessity for an order of pro-

1 tective custody, the court may place the child in the protective custody
2 of: (1) A parent or other person having custody of the child and may enter
3 a restraining order pursuant to subsection (e); (2) a person, other than
4 the parent or other person having custody, who shall not be required to
5 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
6 tated; (3) a youth residential facility; or (4) the secretary if the child is
7 alleged to be a child in need of care the court may award custody to the
8 secretary. However, if the secretary presents the court with a plan to
9 provide services to a child or family which the court finds will assure the
10 safety of the child, the court may only place the child in the protective
11 custody of the secretary until the court finds the services are in place.
12 The court shall have the authority to require any person or entity agreeing
13 to participate in the plan to perform as set out in the plan. When the
14 child is placed in the protective custody of the secretary, the secretary
15 shall have the discretionary authority to place the child with a parent or
16 to make other suitable placement for the child. When circumstances re-
17 quire, a child in protective custody may be placed in a juvenile detention
18 facility or other secure facility pursuant to an order of protective custody
19 for not to exceed 24 hours, excluding Saturdays, Sundays and legal
20 holidays.

21 (d) The order of protective custody shall be served on the child's
22 parents and any other person having legal custody of the child. The order
23 shall prohibit all parties from removing the child from the court's juris-
24 diction without the court's permission.

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

32 (f) The court shall not enter an order removing a child from the
33 custody of a parent pursuant to this section unless the court first finds
34 from evidence presented by the petitioner that reasonable efforts have
35 been made to maintain the family unit and prevent the unnecessary re-
36 moval of the child from the child's home or that an emergency exists
37 which threatens the safety of the child and that remaining in the home is
38 contrary to the welfare of the child or that immediate placement is in the
39 best interest of the child. *If a parent or parents refuse to participate in*
40 *family preservation, such child or children may be removed from the*
41 *home. Family preservation services need not be utilized if there is evidence*
42 *of physical abandonment, physical abuse, sexual abuse or when a parent*
43 *has been convicted of murder in the first degree, K.S.A. 21-3401 and*

1 *amendments thereto, murder in the second degree, K.S.A. 21-3402 and*
 2 *amendments thereto, capital murder, K.S.A. 21-3439 and amendments*
 3 *thereto, voluntary manslaughter, K.S.A. 21-3403 and amendments*
 4 *thereto, or violated a law of another state which prohibits such murder*
 5 *or manslaughter of the child's sibling. Such findings shall be included in*
 6 *any order entered by the court. If the child is placed in the custody of*
 7 *the secretary, the court shall provide the secretary with a written copy of*
 8 *any orders entered for the purpose of documenting these orders upon*
 9 *making the order.*

10 Sec. 5. K.S.A. 38-1543 is hereby amended to read as follows: 38-
 11 1543. (a) Upon notice and hearing, the court may issue an order directing
 12 who shall have temporary custody and may modify the order during the
 13 pendency of the proceedings as will best serve the child's welfare.

14 (b) A hearing pursuant to this section shall be held within 72 hours,
 15 excluding Saturdays, Sundays and legal holidays, following a child having
 16 been taken into protective custody.

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

21 (Name of Court)
 22 (Caption of Case)
 23 NOTICE OF TEMPORARY CUSTODY HEARING

24 TO:
 25 (Names) (Relationship) (Addresses)
 26 _____
 27 _____
 28 _____

29 On _____, _____, (year), at _____ o'clock ____ m.
 30 (day) (date)

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

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

39 Date _____, (year) Clerk of the District Court
 40 by _____
 41 (Seal)

42 REPORT OF SERVICE
 43 I certify that I have delivered a true copy of the above notice to the persons above named

1 in the manner and at the times indicated below:

2	Location of Service				
3	Name	(other than above)	Manner of Service	Date	Time
4	_____	_____	_____	_____	_____
5	_____	_____	_____	_____	_____
6	_____	_____	_____	_____	_____

7 Date Returned _____, _____ (year)

8 _____
9 (Signature)

10 _____
11 (Title)

12 (d) Notice of the temporary custody hearing shall be given at least
13 24 hours prior to the hearing. The court may continue the hearing to
14 afford the 24 hours prior notice or, with the consent of the party, proceed
15 with the hearing at the designated time. If an order of temporary custody
16 is entered and the parent or other person having custody of the child has
17 not been notified of the hearing, did not appear or waive appearance and
18 requests a rehearing, the court shall rehear the matter without unne-
19 cessary delay.

20 (e) Oral notice may be used for giving notice of a temporary custody
21 hearing where there is insufficient time to give written notice. Oral notice
22 is completed upon filing a certificate of oral notice in substantially the
23 following form:

24 (Name of Court)

25 (Caption of Case)

26 CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

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

30				Method of Communication	
31	Name	Relationship	Date	Time	in person or telephone)
32	_____	_____	_____	_____	_____
33	_____	_____	_____	_____	_____
34	_____	_____	_____	_____	_____

35 I advised each of the above persons that:

- 36 (1) The hearing is to determine if the above child or children should be in the temporary
- 37 custody of a person or agency other than a parent;
- 38 (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or
- 39 children named above;
- 40 (3) each parent or legal custodian has the right to appear and be heard personally either
- 41 with or without an attorney;
- 42 (4) an attorney will be appointed for a parent who can show that the parent is not
- 43 financially able to hire an attorney; and

1 (5) the court may order one or both parents to pay child support.

2
3 _____
(Signature)

4
5 _____
(Name Printed)

6
7 _____
(Title)

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

13 (g) Whenever the court determines the necessity for an order of tem-
14 porary custody the court may place the child in the temporary custody
15 of: (1) A parent or other person having custody of the child and may enter
16 a restraining order pursuant to subsection (h); (2) a person, other than
17 the parent or other person having custody, who shall not be required to
18 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
19 tated; (3) a youth residential facility; or (4) the secretary if the child is
20 alleged to be a child in need of care, the court may award custody to the
21 secretary. However, if the secretary presents the court with a plan to
22 provide services to a child or family which the court finds will assure the
23 safety of the child, the court may only place the child in the temporary
24 custody of the secretary until the court finds the services are in place.
25 The court shall have the authority to require any person or entity agreeing
26 to participate in the plan to perform as set out in the plan. When the
27 child is placed in the temporary custody of the secretary, the secretary
28 shall have the discretionary authority to place the child with a parent or
29 to make other suitable placement for the child. When circumstances re-
30 quire, a child may be placed in a juvenile detention facility or other secure
31 facility, but the total amount of time that the child may be held in such
32 facility under this section and K.S.A. 38-1542 and amendments thereto
33 shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-
34 days. The order of temporary custody shall remain in effect until modified
35 or rescinded by the court or a disposition order is entered but not ex-
36 ceeding 60 days, unless good cause is shown and stated on the record.

37 (h) If the court issues an order of temporary custody, the court may
38 enter an order restraining any alleged perpetrator of physical, sexual,
39 mental or emotional abuse of the child from residing in the child's home;
40 visiting, contacting, harassing or intimidating the child; or attempting to
41 visit, contact, harass or intimidate the child.

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

1 evidence presented by the petitioner that reasonable efforts have been
2 made to maintain the family unit and prevent the unnecessary removal
3 of the child from the child's home or that an emergency exists which
4 threatens the safety of the child and that remaining in the home is con-
5 trary to the welfare of the child or that placement is in the best interest
6 of the child. Such findings shall be included in any order entered by the
7 court. *If a parent or parents refuse to participate in family preservation,*
8 *such child or children may be removed from the home. Family preser-*
9 *vation services need not be utilized if there is evidence of physical aban-*
10 *donment, physical abuse, sexual abuse or when a parent has been con-*
11 *victed of murder in the first degree, K.S.A. 21-3401 and amendments*
12 *thereto, murder in the second degree, K.S.A. 21-3402 and amendments*
13 *thereto, capital murder, K.S.A. 21-3439 and amendments thereto, vol-*
14 *untary manslaughter, K.S.A. 21-3403 and amendments thereto, or vio-*
15 *lated a law of another state which prohibits such murder or manslaughter*
16 *of the child's sibling. If the child is placed in the custody of the secretary,*
17 *the court shall provide the secretary with a written copy of any orders*
18 *entered for the purpose of documenting these orders upon making the*
19 *order.*

20 Sec. 6. K.S.A. 38-1563 is hereby amended to read as follows: 38-
21 1563. (a) After consideration of any evidence offered relating to disposi-
22 tion, the court may retain jurisdiction and place the child in the custody
23 of the child's parent subject to terms and conditions which the court
24 prescribes to assure the proper care and protection of the child, including
25 supervision of the child and the parent by a court services officer, or may
26 order the child and the parent to participate in programs operated by the
27 secretary or another appropriate individual or agency. The terms and
28 conditions may require any special treatment or care which the child
29 needs for the child's physical, mental or emotional health.

30 (b) The duration of any period of supervision or other terms or con-
31 ditions shall be for an initial period of no more than 12 months. The
32 court, at the expiration of that period, upon a hearing and for good cause
33 shown, may make successive extensions of the supervision or other terms
34 or conditions for up to 12 months at a time.

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

42 (d) If the court finds that placing the child in the custody of a parent
43 will not assure protection from physical, mental or emotional abuse or

1 neglect or sexual abuse or is contrary to the welfare of the child or that
2 placement would be in the best interests of the child, the court shall enter
3 an order awarding custody of the child, until the further order of the
4 court, to one of the following:

- 5 (1) A relative of the child or a person with whom the child has close
6 emotional ties;
- 7 (2) any other suitable person;
- 8 (3) a shelter facility; or
- 9 (4) the secretary.

10 If the child is adjudged to be a child in need of care, the court shall
11 not place the child in the custody of the secretary if the court has received
12 from the secretary, written documentation of the services and/or com-
13 munity services plan offered or delivered to prevent the need for such
14 custody unless the court finds that the services documented by the sec-
15 retary are insufficient to protect the safety of the child and that being in
16 the custody of the parent with such services in place is contrary to the
17 welfare or that placement is in the best interests of the child. The court
18 shall have the authority to require any person or entity agreeing to partic-
19 ipate in the plan to perform as set out in the plan. The secretary shall
20 present to the court in writing the specific actions taken to maintain the
21 family unit and prevent the unnecessary removal of the child from the
22 child's home.

23 In making such a custody order, the court shall give preference, to the
24 extent that the court finds it is in the best interests of the child, first to
25 granting custody to a relative of the child and second to granting custody
26 of the child to a person with whom the child has close emotional ties. If
27 the court has awarded legal custody based on the finding specified by this
28 subsection, the legal custodian shall not return the child to the home of
29 that parent without the written consent of the court.

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

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

33 (2) The secretary shall notify the court in writing of any placement
34 of the child or, within 10 days of the order awarding the custody of the
35 child to the secretary, any proposed placement of the child, whichever
36 occurs first.

37 (3) The court may determine if such placement is contrary to the
38 welfare or in the best interests of the child, and if the court determines
39 that such placement is not in the best interests of the child, the court
40 shall notify the secretary who shall then make an alternative placement
41 subject to the procedures established in this paragraph. In determining
42 if such placement is in the best interests of the child, the court, after
43 providing the parties with an opportunity to be heard, shall consider the

1 health and safety needs of the child and the resources available to meet
2 the needs of children in the custody of the secretary.

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

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

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

19 (h) The court shall not enter an order removing a child from the
20 custody of a parent pursuant to this section unless the court first finds
21 from evidence presented by the petitioner that reasonable efforts have
22 been made to maintain the family unit and prevent the unnecessary re-
23 moval of the child from the child's home ~~or that reasonable efforts are~~
24 ~~not necessary because reintegration is not a viable alternative, or that an~~
25 ~~emergency exists which threatens the safety of the child and that allowing~~
26 ~~the child to remain in the home is contrary to the welfare of the child or~~
27 ~~that placement would be in the best interest of the child by utilizing~~
28 ~~family preservation services. If a parent or parents refuse to participate~~
29 ~~in family preservation, such child or children may be removed from the~~
30 ~~home. Family preservation services need not be utilized if there is evidence~~
31 ~~of physical abandonment, physical abuse, sexual abuse or when a parent~~
32 ~~has been convicted of murder in the first degree, K.S.A. 21-3401 and~~
33 ~~amendments thereto, murder in the second degree, K.S.A. 21-3402 and~~
34 ~~amendments thereto, capital murder, K.S.A. 21-3439 and amendments~~
35 ~~thereto, voluntary manslaughter, K.S.A. 21-3403 and amendments~~
36 ~~thereto, or violated a law of another state which prohibits such murder~~
37 ~~or manslaughter of the child's sibling. If the child is placed in the custody~~
38 ~~of the secretary, the court shall provide the secretary with a copy of any~~
39 ~~orders entered for the purpose of documenting these orders within 10~~
40 ~~days of making the order. Reintegration may not be a viable alternative~~
41 ~~when the: (1) Parent has been found by a court to have committed murder~~
42 ~~in the first degree, K.S.A. 21-3401, and amendments thereto, murder in~~
43 ~~the second degree, K.S.A. 21-3402, and amendments thereto, capital~~

1 murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaugh-
2 ter, K.S.A. 21-3403, and amendments thereto, or violated a law of another
3 state which prohibits such murder or manslaughter of a child; (2) parent
4 aided or abetted, attempted, conspired or solicited to commit such mur-
5 der or voluntary manslaughter of a child as provided in subsection (h)(1);
6 (3) parent committed a felony battery that resulted in bodily injury to the
7 child or another child; (4) parent has subjected the child or another child
8 to aggravated circumstances as defined in K.S.A. 38-1502, and amend-
9 ments thereto; (5) parental rights of the parent to another child have been
10 terminated involuntarily or (6) the child has been in extended out of home
11 placement as defined in K.S.A. 38-1502, and amendments thereto. Such
12 findings shall be included in any order entered by the court.

13 (i) In addition to or in lieu of any other order authorized by this
14 section, if a child is adjudged to be a child in need of care by reason of a
15 violation of the uniform controlled substances act (K.S.A. 65-4101 *et seq.*,
16 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
17 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
18 order the child to submit to and complete an alcohol and drug evaluation
19 by a community-based alcohol and drug safety action program certified
20 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
21 to exceed the fee established by that statute for such evaluation. If the
22 court finds that the child and those legally liable for the child's support
23 are indigent, the fee may be waived. In no event shall the fee be assessed
24 against the secretary or the department of social and rehabilitation serv-
25 ices.

26 (j) In addition to any other order authorized by this section, if child
27 support has been requested and the parent or parents have a duty to
28 support the child, the court may order one or both parents to pay child
29 support and, when custody is awarded to the secretary, the court shall
30 order one or both parents to pay child support. The court shall determine,
31 for each parent separately, whether the parent is already subject to an
32 order to pay support for the child. If the parent is not presently ordered
33 to pay support for any child who is a ward of the court and the court has
34 personal jurisdiction over the parent, the court shall order the parent to
35 pay child support in an amount determined under K.S.A. 38-1595, and
36 amendments thereto. Except for good cause shown, the court shall issue
37 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
38 *seq.*, and amendments thereto, for each parent ordered to pay support
39 under this subsection, regardless of whether a payor has been identified
40 for the parent. A parent ordered to pay child support under this subsec-
41 tion shall be notified, at the hearing or otherwise, that the child support
42 order may be registered pursuant to K.S.A. 38-1597, and amendments
43 thereto. The parent shall also be informed that, after registration, the

1 income withholding order may be served on the parent's employer with-
2 out further notice to the parent and the child support order may be en-
3 forced by any method allowed by law. Failure to provide this notice shall
4 not affect the validity of the child support order.

5 Sec. 7. K.S.A. 38-1508 38-1542, 38-1543 and 38-1563 and K.S.A.
6 2002 Supp. 38-1507 are hereby repealed.

7 Sec. 8. This act shall take effect and be in force from and after its
8 publication in the statute book.

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