

HOUSE BILL No. 2677

By Representatives F. Miller, Burroughs, Dahl, Howell, Huebert, Huy,
Jack, Merrick, Judy Morrison and D. Williams

2-2

10 AN ACT concerning children in need of care; amending K.S.A. 38-1501,
11 38-1542, 38-1543, 38-1559 and 38-1563 and K.S.A. 2003 Supp. 38-
12 1502 and repealing the existing sections.

13
14 WHEREAS, It is the intent of the legislature for the department of
15 social and rehabilitation services to fully utilize family preservation serv-
16 ices and to remove the child from the parental home as an action of last
17 resort;

18 WHEREAS, It is the intent of this bill to incorporate many of the
19 provisions of the keeping children and families safe act of 2003 signed
20 into law by the president of the United States; and

21 WHEREAS, It is the intent that the implementation of this bill will
22 potentially reduce the number of children placed into foster care and
23 thus significantly reduce the funding required for these services from the
24 state general fund, as well as reduce the amount of federal matching
25 funds: Now, therefore,

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

27 New Section 1. (a) All employees of the department of social and
28 rehabilitation services and contractor case workers, in accordance with
29 the federal keeping children and families safe act of 2003, shall at the
30 initial time of contact with a parent or guardian whose child is the subject
31 of a child abuse and neglect investigation:

32 (1) Advise the parent or guardian, verbally and in writing, of the spe-
33 cific complaints or allegations made against the person subject to a child
34 abuse and neglect investigation.

35 (2) Present a written document to the parent or guardian called “the
36 parent’s bill of rights” which shall explain the legal duties of such em-
37 ployees and case workers to protect the constitutional and statutory rights
38 of children and families from the initial time of contact during investi-
39 gation through treatment.

40 (3) Verbally recite to the parent or guardian the following statement:
41 “We are here to investigate an allegation of child abuse and neglect. You
42 are not required to allow the department of social and rehabilitation serv-
43 ices entry into your home unless there has been a warrant issued.”

1 (b) All employees of the department of social and rehabilitation serv-
2 ices and contractor case workers shall receive training to implement the
3 provisions of subsection (a).

4 (c) The employee and case worker training and the parent's bill of
5 rights shall be reviewed and approved by the office of the Kansas attorney
6 general for completeness of instruction and accuracy.

7 New Sec. 2. (a) If a child is taken into custody and not forthwith
8 delivered to the custody of the child's parent pursuant to K.S.A. 38-1528,
9 and amendments thereto, the parents shall receive a written document
10 stating information regarding the child. Such written document shall be
11 known and may be cited as "the department of social and rehabilitation
12 services parental notification of children taken into custody" and shall
13 include, but not be limited to, the following information:

- 14 (1) The name of the officer or person taking the child into custody;
- 15 (2) the full name of the child taken into custody;
- 16 (3) the location, date and time the child was taken into custody;
- 17 (4) the names of persons who were present at the time the child was
18 taken into custody;
- 19 (5) why the child was taken into custody;
- 20 (6) the name of the alleged perpetrator, if known, and any alleged
21 violation of law;
- 22 (7) a name and telephone number of a person whom the parents can
23 contact for information concerning the child;
- 24 (8) the immediate action to be taken by the department of social and
25 rehabilitation services;
- 26 (9) the rights the parents have concerning such parent's child being
27 taken into custody including: (A) The visitation rights of the parents while
28 the child is in custody;
- 29 (B) an authorization certificate for release of information to third par-
30 ties by the department of social and rehabilitation services and by the
31 foster care contractors handling the case; and
- 32 (C) the freedom to contact such parent's legislators or clergy for
33 counsel; and
- 34 (10) any other information as determined by the attorney general.

35 (b) Such written document shall be prepared and signed by an em-
36 ployee of the department of social and rehabilitation services and per-
37 sonally served upon at least one of the parents or custodial guardian within
38 24 hours, excluding Saturday, Sunday and legal holidays, from the time
39 the child was taken into custody. If such parent or guardian cannot be
40 located, the document shall be mailed to such parent or guardian by
41 restricted mail service.

42 (c) In addition to such written document, an employee of the de-
43 partment of social and rehabilitation services shall attempt to contact one

1 of the parents or custodial guardian, within six hours from the time the
2 child was taken unto custody, to verbally inform such parent or guardian
3 that the child was taken into custody. If a parent or guardian is unable to
4 be contacted, such employee shall attempt to contact a known relative of
5 such child within the time frame previously established.

6 (d) The secretary of social and rehabilitation services shall adopt rules
7 and regulations to implement the provisions of this section.

8 (e) This section shall be part of and supplemental to the Kansas code
9 for care of children.

10 New Sec. 3. (a) Except in protective custody hearings and temporary
11 custody hearings, the parent shall be notified of hearings not less than 10
12 days prior to a hearing pursuant to this code. Such notice shall be by
13 restricted mail service. If the judge announced the date of the next hear-
14 ing in court, such notice is not required.

15 (b) This section shall be part of and supplemental to the Kansas code
16 for care of children.

17 New Sec. 4. (a) The department of social and rehabilitation services
18 shall not place the name of a person on the child abuse and neglect central
19 registry unless such person is a substantiated perpetrator.

20 (b) This section shall be part of and supplemental to the Kansas code
21 for care of children.

22 New Sec. 5. (a) Effective upon the date that parental rights have
23 been terminated, the child support payments of any kind from the parent
24 shall cease.

25 (b) This section shall be part of and supplemental to the Kansas code
26 for care of children.

27 Sec. 6. K.S.A. 38-1501 is hereby amended to read as follows: 38-
28 1501. K.S.A. 38-1501 through 38-1593 shall be known as and may be
29 cited as the Kansas code for care of children and shall be liberally con-
30 strued, to the end that each child within its provisions shall receive the
31 care, custody, guidance, control and discipline, ~~preferably in the child's~~
32 ~~own home, as will best serve the child's welfare and the best interests of~~
33 ~~the state~~ *with the primary objective being the preservation of the family.*
34 All proceedings, orders, judgments and decrees shall be deemed to have
35 been taken and done in the exercise of the parental power of the state.
36 Proceedings pursuant to this code shall be civil in nature.

37 Sec. 7. K.S.A. 2003 Supp. 38-1502 is hereby amended to read as
38 follows: 38-1502. As used in this code, unless the context otherwise
39 indicates:

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

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

- 1 parents or other custodian;
- 2 (2) is without the care or control necessary for the child's physical,
- 3 mental or emotional health;
- 4 (3) has been physically, mentally or emotionally abused or neglected
- 5 or sexually abused;
- 6 (4) has been placed for care or adoption in violation of law;
- 7 (5) has been abandoned or does not have a known living parent;
- 8 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
- 9 and amendments thereto;
- 10 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)
- 11 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
- 12 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
- 13 4204a and amendments thereto, does an act which, when committed by
- 14 a person under 18 years of age, is prohibited by state law, city ordinance
- 15 or county resolution but which is not prohibited when done by an adult;
- 16 (8) while less than 10 years of age, commits any act which if done by
- 17 an adult would constitute the commission of a felony or misdemeanor as
- 18 defined by K.S.A. 21-3105 and amendments thereto;
- 19 (9) is willfully and voluntarily absent from the child's home without
- 20 the consent of the child's parent or other custodian;
- 21 (10) is willfully and voluntarily absent at least a second time from a
- 22 court ordered or designated placement, or a placement pursuant to court
- 23 order, if the absence is without the consent of the person with whom the
- 24 child is placed or, if the child is placed in a facility, without the consent
- 25 of the person in charge of such facility or such person's designee;
- 26 (11) has been residing in the same residence with a sibling or another
- 27 person under 18 years of age, who has been physically, mentally or emo-
- 28 tionally abused or neglected, or sexually abused; or
- 29 (12) while less than 10 years of age commits the offense defined in
- 30 K.S.A. 21-4204a and amendments thereto.
- 31 (b) "Physical, mental or emotional abuse" means the infliction of
- 32 physical, mental or emotional injury or the causing of a deterioration of
- 33 a child and may include, but shall not be limited to, maltreatment or
- 34 exploiting a child to the extent that the child's health or emotional well-
- 35 being is endangered. *Physical, mental or emotional abuse shall not include*
- 36 *reasonable disciplinarian corporal punishment.*
- 37 (c) "Sexual abuse" means any act committed with a child which is
- 38 described in article 35, chapter 21 of the Kansas Statutes Annotated and
- 39 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
- 40 thereto.
- 41 (d) "Parent," when used in relation to a child or children, includes a
- 42 guardian, conservator and every person who is by law liable to maintain,
- 43 care for or support the child.

- 1 (e) “Interested party” means the state, the petitioner, the child, any
2 parent, any grandparent, and any person found to be an interested party
3 pursuant to K.S.A. 38-1541 and amendments thereto.
- 4 (f) “Law enforcement officer” means any person who by virtue of
5 office or public employment is vested by law with a duty to maintain
6 public order or to make arrests for crimes, whether that duty extends to
7 all crimes or is limited to specific crimes.
- 8 (g) “Youth residential facility” means any home, foster home or struc-
9 ture which provides 24-hour-a-day care for children and which is licensed
10 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.
- 11 (h) “Shelter facility” means any public or private facility or home
12 other than a juvenile detention facility that may be used in accordance
13 with this code for the purpose of providing either temporary placement
14 for the care of children in need of care prior to the issuance of a dispos-
15 itional order or longer term care under a dispositional order.
- 16 (i) “Juvenile detention facility” means any secure public or private
17 facility used for the lawful custody of accused or adjudicated juvenile
18 offenders which must not be a jail.
- 19 (j) “Adult correction facility” means any public or private facility, se-
20 cure or nonsecure, which is used for the lawful custody of accused or
21 convicted adult criminal offenders.
- 22 (k) “Secure facility” means a facility which is operated or structured
23 so as to ensure that all entrances and exits from the facility are under the
24 exclusive control of the staff of the facility, whether or not the person
25 being detained has freedom of movement within the perimeters of the
26 facility, or which relies on locked rooms and buildings, fences or physical
27 restraint in order to control behavior of its residents. No secure facility
28 shall be in a city or county jail.
- 29 (l) “Ward of the court” means a child over whom the court has ac-
30 quired jurisdiction by the filing of a petition pursuant to this code and
31 who continues subject to that jurisdiction until the petition is dismissed
32 or the child is discharged as provided in K.S.A. 38-1503 and amendments
33 thereto.
- 34 (m) “Custody,” whether temporary, protective or legal, means the
35 status created by court order or statute which vests in a custodian,
36 whether an individual or an agency, the right to physical possession of
37 the child and the right to determine placement of the child, subject to
38 restrictions placed by the court.
- 39 (n) “Placement” means the designation by the individual or agency
40 having custody of where and with whom the child will live.
- 41 (o) “Secretary” means the secretary of social and rehabilitation
42 services.
- 43 (p) “Relative” means a person related by blood, marriage or adoption

1 but, when referring to a relative of a child's parent, does not include the
2 child's other parent.

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

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

12 (s) "Jail" means:

13 (1) An adult jail or lockup; or

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

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

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

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

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

42 (x) "Aggravated circumstances" means the abandonment, torture,
43 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

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

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

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

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

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

23 (1) Failure to provide the child with food, clothing or shelter neces-
24 sary to sustain the life or health of the child. *A house that does not create*
25 *a health hazard shall not constitute neglect;*

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~~ *may result* in bodily injury or a *strong* likelihood of harm to the
30 child; or

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

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

1 (ee) “Substantiated act of abuse or neglect” means that a petition al-
2 leging abuse or neglect has been confirmed by a court order pursuant to
3 the Kansas code for care of children by clear and convincing evidence.

4 (ff) “Substantiated perpetrator” means a person who caused or cre-
5 ated the situation that resulted in the child being adjudicated as a child
6 in need of care or has been determined by a judgment of the court pur-
7 suant to the Kansas code for care of children by clear and convincing
8 evidence to have committed a substantiated act of abuse or neglect.

9 (gg) “Child abuse and neglect central registry” means a list main-
10 tained by the department of social and rehabilitation services of persons
11 who are substantiated perpetrators of child abuse, neglect or sexual abuse
12 by court order.

13 Sec. 8. K.S.A. 38-1542 is hereby amended to read as follows: 38-
14 1542. (a) The court upon verified application may issue *ex parte* an order
15 directing that a child be held in protective custody and, if the child has
16 not been taken into custody, an order directing that the child be taken
17 into custody. The application shall state for each child:

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

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

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

33 (2) No child shall be held in protective custody for more than 72
34 hours, excluding Saturdays, Sundays and legal holidays, unless within the
35 72-hour period a determination is made as to the necessity for temporary
36 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
37 shall be construed to mean that the child must remain in protective cus-
38 tody for 72 hours.

39 (c) Whenever the court determines the necessity for an order of pro-
40 tective custody, the court ~~may place~~ shall first consider placing the child
41 in the protective custody of: ~~(1)~~ a parent or other person having custody
42 of the child and may enter a restraining order pursuant to subsection (e);
43 ~~(2)~~ a. If parental custody is not a viable alternative, the court shall place

1 *the child in the protective custody of the child's grandparents, aunts,*
2 *uncles, siblings or cousins. If the preceding placements are not a viable*
3 *alternative, the court may place the child in the protective custody of: (1)*
4 *A person, other than the parent or other person having custody or relative,*
5 *who shall not be required to be licensed under article 5 of chapter 65 of*
6 *the Kansas Statutes Annotated, and amendments thereto; ~~(2)~~ (2) a youth*
7 *residential facility; or ~~(4)~~ (3) the secretary if the child is alleged to be a*
8 *child in need of care the court may award custody to the secretary. How-*
9 *ever, if the secretary presents the court with a plan to provide services to*
10 *a child or family which the court finds will assure the safety of the child,*
11 *the court may only place the child in the protective custody of the sec-*
12 *retary until the court finds the services are in place. The court shall have*
13 *the authority to require any person or entity agreeing to participate in*
14 *the plan to perform as set out in the plan. When the child is placed in*
15 *the protective custody of the secretary, the secretary shall have the dis-*
16 *cretionary authority to place the child with a parent or to make other*
17 *suitable placement for the child. When circumstances require, a child in*
18 *protective custody may be placed in a juvenile detention facility or other*
19 *secure facility pursuant to an order of protective custody for not to exceed*
20 *24 hours, excluding Saturdays, Sundays and legal 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. 9. 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	Name	Location of Service	Manner of Service	Date	Time
3	(other than above)				

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 unneces-
19 sary 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 below:

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

31	_____	_____	_____	_____	_____
32	_____	_____	_____	_____	_____
33	_____	_____	_____	_____	_____

34 I advised each of the above persons that:

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

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(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~~ *shall first consider placing* 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); ~~(2) a. If parental custody is not a viable alternative, the court shall place the child in the temporary custody of the child's grandparents, aunts, uncles, siblings or cousins. If the preceding placements are not a viable alternative, the court may place the child in the temporary custody of:~~ (1) A person, other than the parent or other person having custody or relative, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, *and amendments thereto*; ~~(2)~~ (2) a youth residential facility; or ~~(4)~~ (3) 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. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. When the child is placed in the temporary custody of the secretary, the secretary shall have the discretionary authority to place the child with a parent or to make other suitable placement for the child. When circumstances require, a child may be placed in a juvenile detention facility or other secure facility, but the total amount of time that the child may be held in such facility under this section and K.S.A. 38-1542 and amendments thereto shall not exceed 24 hours, excluding Saturdays, Sundays and legal holidays. The order of temporary custody shall remain in effect until modified or rescinded by the court or a disposition order is entered but not exceeding 60 days, unless good cause is shown and stated on the record.

(h) If the court issues an order of temporary custody, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home;

1 visiting, contacting, harassing or intimidating the child; or attempting to
2 visit, contact, harass or intimidate the child.

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

24 Sec. 10. K.S.A. 38-1559 is hereby amended to read as follows: 38-
25 1559. (a) Before placement of a child with a person other than the child's
26 parent pursuant to this code, the secretary or a representative of the
27 secretary ~~may convene~~ shall schedule a conference ~~of~~ and issue a written
28 ~~or verbal invitation to~~ the child's known grandparents, aunts, uncles, sib-
29 lings, cousins and other relatives determined by the secretary or the sec-
30 retary's representative to have a potential interest in determining a place-
31 ment which is in the best interests of the child. The secretary or the
32 secretary's representative shall provide for the child's relatives to be given
33 any information relevant to the determination of the placement of the
34 child, including the needs of the child and any other information that
35 would be helpful in making a placement in the best interests of the child.
36 After presentation of the information, the relatives of the child shall be
37 permitted to discuss and decide, outside the presence of any other per-
38 sons, the family member or members with whom it would be in the child's
39 best interest to be placed. The relatives shall make their recommendation
40 to the secretary or the secretary's representative. Unless the secretary
41 determines that there is good cause to place the child with a person other
42 than the relative recommended by the child's relatives, the child shall be
43 placed in accordance with the recommendations of the relatives. *The sec-*

1 *retary or the secretary's representative shall report to the court the rec-*
2 *ommendations made by the relatives and the secretary or the secretary's*
3 *representative.*

4 (b) Before placement of a child with a person other than the child's
5 parent pursuant to this code, the court or a court services officer at the
6 direction of the court ~~may convene~~ *shall schedule* a conference ~~of and~~
7 *issue a written or verbal invitation to* the child's known grandparents,
8 aunts, uncles, siblings, cousins and other relatives determined by the court
9 or court services officer to have a potential interest in determining a
10 placement which is in the best interests of the child. The court or the
11 court services officer shall provide for the child's relatives to be given any
12 information relevant to the determination of the placement of the child,
13 including the needs of the child and any other information that would be
14 helpful in making a placement in the best interests of the child. After
15 presentation of the information, the relatives of the child shall be per-
16 mitted to discuss and decide, outside the presence of any other persons,
17 the family member or members with whom it would be in the child's best
18 interest to be placed. The relatives shall make their recommendation to
19 the court or court services officer. Unless the court determines that there
20 is good cause to place the child with a person other than the relative
21 recommended by the child's relatives, the child shall be placed in ac-
22 cordance with the recommendations of the relatives.

23 (c) A person participating in a conference pursuant to this section
24 shall have immunity from any civil liability that might otherwise be in-
25 curred or imposed as a result of the person's participation.

26 (d) This section shall be part of and supplemental to the Kansas code
27 for care of children.

28 Sec. 11. K.S.A. 38-1563 is hereby amended to read as follows: 38-
29 1563. (a) After consideration of any evidence offered relating to disposi-
30 tion, the court may retain jurisdiction and place the child in the custody
31 of the child's parent subject to terms and conditions which the court
32 prescribes to assure the proper care and protection of the child, including
33 supervision of the child and the parent by a court services officer, or may
34 order the child and the parent to participate in programs operated by the
35 secretary or another appropriate individual or agency. The terms and
36 conditions may require any special treatment or care which the child
37 needs for the child's physical, mental or emotional health.

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

43 (c) The court may order the child and the parents of any child who

1 has been adjudged a child in need of care to attend counseling sessions
2 as the court directs. The expense of the counseling may be assessed as
3 an expense in the case. No mental health center shall charge a greater
4 fee for court-ordered counseling than the center would have charged to
5 the person receiving counseling if the person had requested counseling
6 on the person's own initiative.

7 (d) If the court finds that placing the child in the custody of a parent
8 will not assure protection from physical, mental or emotional abuse or
9 neglect or sexual abuse or is contrary to the welfare of the child or that
10 placement would be in the best interests of the child, the court shall ~~enter~~
11 *first consider entering* an order awarding custody of the child, until the
12 further order of the court, to ~~one of the following:~~

13 ~~—(1) a relative of the child or a~~ *If custody with a relative is not a viable*
14 *alternative, the court shall enter an order awarding custody of the child,*
15 *until further order of the court, to one of the following: (1) A person with*
16 *whom the child has close emotional ties;*

17 (2) any other suitable person;

18 (3) a shelter facility; or

19 (4) the secretary.

20 If the child is adjudged to be a child in need of care, the court shall
21 not place the child in the custody of the secretary if the court has received
22 from the secretary, written documentation of the services and/or com-
23 munity services plan offered or delivered to prevent the need for such
24 custody unless the court finds that the services documented by the sec-
25 retary are insufficient to protect the safety of the child and that being in
26 the custody of the parent with such services in place is contrary to the
27 welfare or that placement is in the best interests of the child. The court
28 shall have the authority to require any person or entity agreeing to par-
29 ticipate in the plan to perform as set out in the plan. The secretary shall
30 present to the court in writing the specific actions taken to maintain the
31 family unit and prevent the unnecessary removal of the child from the
32 child's home.

33 In making such a custody order, the court shall give preference, to the
34 extent that the court finds it is in the best interests of the child, first to
35 granting custody to a relative of the child and second to granting custody
36 of the child to a person with whom the child has close emotional ties. If
37 the court has awarded legal custody based on the finding specified by this
38 subsection, the legal custodian shall not return the child to the home of
39 that parent without the written consent of the court.

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

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

43 (2) The secretary shall notify the court in writing of any placement

1 of the child or, within 10 days of the order awarding the custody of the
2 child to the secretary, any proposed placement of the child, whichever
3 occurs first.

4 (3) The court may determine if such placement is contrary to the
5 welfare or in the best interests of the child, and if the court determines
6 that such placement is not in the best interests of the child, the court
7 shall notify the secretary who shall then make an alternative placement
8 subject to the procedures established in this paragraph. In determining
9 if such placement is in the best interests of the child, the court, after
10 providing the parties with an opportunity to be heard, shall consider the
11 health and safety needs of the child and the resources available to meet
12 the needs of children in the custody of the secretary.

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

19 (f) If custody of a child is awarded under this section to a person
20 other than the child's parent, the court may grant any individual reason-
21 able rights to visit the child upon motion of the individual and a finding
22 that the visitation rights would be in the best interests of the child. *Such*
23 *visitation shall be unattended unless the court orders attended visitation.*
24 *The parent may make a recording of the attended or unattended visitation.*

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

31 (h) The court shall not enter an order removing a child from the
32 custody of a parent pursuant to this section unless the court first finds
33 from evidence presented by the petitioner that reasonable efforts have
34 been made to maintain the family unit and prevent the unnecessary re-
35 moval of the child from the child's home ~~or that reasonable efforts are~~
36 ~~not necessary because reintegration is not a viable alternative, or that an~~
37 ~~emergency exists which threatens the safety of the child and that allowing~~
38 ~~the child to remain in the home is contrary to the welfare of the child or~~
39 ~~that placement would be in the best interest of the child by utilizing~~
40 *family preservation services. If a parent or parents refuse to participate*
41 *in family preservation, such child or children may be removed from the*
42 *home. Family preservation services need not be utilized if there is evidence*
43 *of physical abandonment, physical abuse, sexual abuse or when a parent*

1 *has been convicted of murder in the first degree, K.S.A. 21-3401 and*
2 *amendments thereto, murder in the second degree, K.S.A. 21-3402 and*
3 *amendments thereto, capital murder, K.S.A. 21-3439 and amendments*
4 *thereto, voluntary manslaughter, K.S.A. 21-3403 and amendments*
5 *thereto, or violated a law of another state which prohibits such murder*
6 *or manslaughter of the child's sibling. If the child is placed in the custody*
7 *of the secretary, the court shall provide the secretary with a copy of any*
8 *orders entered for the purpose of documenting these orders within 10*
9 *days of making the order. Reintegration may not be a viable alternative*
10 *when the: (1) Parent has been found by a court to have committed murder*
11 *in the first degree, K.S.A. 21-3401, and amendments thereto, murder in*
12 *the second degree, K.S.A. 21-3402, and amendments thereto, capital*
13 *murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaugh-*
14 *ter, K.S.A. 21-3403, and amendments thereto, or violated a law of another*
15 *state which prohibits such murder or manslaughter of a child; (2) parent*
16 *aided or abetted, attempted, conspired or solicited to commit such mur-*
17 *der or voluntary manslaughter of a child as provided in subsection (h)(1);*
18 *(3) parent committed a felony battery that resulted in bodily injury to the*
19 *child or another child; (4) parent has subjected the child or another child*
20 *to aggravated circumstances as defined in K.S.A. 38-1502, and amend-*
21 *ments thereto; (5) parental rights of the parent to another child have been*
22 *terminated involuntarily or (6) the child has been in extended out of home*
23 *placement as defined in K.S.A. 38-1502, and amendments thereto. Such*
24 *findings shall be included in any order entered by the court.*

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

38 (j) In addition to any other order authorized by this section, if child
39 support has been requested and the parent or parents have a duty to
40 support the child, the court may order one or both parents to pay child
41 support and, when custody is awarded to the secretary, the court shall
42 order one or both parents to pay child support. The court shall determine,
43 for each parent separately, whether the parent is already subject to an

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

19 (k) *In addition to any other order authorized by this section, if the*
20 *parent of a child and the relative are both indigent and a relative of the*
21 *child has been awarded custody, the court may require the department*
22 *of social and rehabilitation services to pay to the relative an amount es-*
23 *tablished by the court but not to exceed the amount of money the de-*
24 *partment of social and rehabilitation services would normally pay the*
25 *foster parent for the services of a licensed foster parent had such child*
26 *been placed with the foster care parent.*

27 Sec. 12. K.S.A. 38-1501, 38-1542, 38-1543, 38-1559 and 38-1563 and
28 K.S.A. 2003 Supp. 38-1502 are hereby repealed.

29 Sec. 13. This act shall take effect and be in force from and after its
30 publication in the statute book.