

*As Amended by Senate Committee*

Session of 2009

**SENATE BILL No. 94**

By Committee on Ways and Means

1-26

10 AN ACT concerning the Kansas code for care of children; relating to  
11 placement of children into custody; amending K.S.A. 2008 Supp. 38-  
12 2232, 38-2242, 38-2243 and 38-2255 and repealing the existing  
13 sections.

14

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

16 Section 1. K.S.A. 2008 Supp. 38-2232 is hereby amended to read as  
17 follows: 38-2232. (a) To the extent possible, when any law enforcement  
18 officer takes into custody a child under the age of 18 years without a court  
19 order, the child shall forthwith be delivered to the custody of the child's  
20 parent or other custodian unless there are reasonable grounds to believe  
21 that such action would not be in the best interests of the child. Except as  
22 provided in subsection (b), if the child is not delivered to the custody of  
23 the child's parent or other custodian, the child shall forthwith be delivered  
24 to ~~a facility or person designated by the secretary~~; a shelter facility des-  
25 ignated by the court, court services officer, juvenile intake and assessment  
26 worker, licensed attendant care center or other person *or, if the child is*  
27 *15 years of age or younger, or 16 or 17 years of age if the child **has no***  
28 ***identifiable parental or family resources or shows signs of physical,***  
29 *mental, emotional or sexual abuse, to a facility or person designated by*  
30 *the secretary*. If, after delivery of the child to a shelter facility, the person  
31 in charge of the shelter facility at that time and the law enforcement  
32 officer determine that the child will not remain in the shelter facility and  
33 if the child is presently alleged, but not yet adjudicated, to be a child in  
34 need of care solely pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2008  
35 Supp. 38-2202, and amendments thereto, the law enforcement officer  
36 shall deliver the child to a juvenile detention facility or other secure fa-  
37 cility, designated by the court, where the child shall be detained for not  
38 more than 24 hours, excluding Saturdays, Sundays and legal holidays. No  
39 child taken into custody pursuant to this code shall be placed in a juvenile  
40 detention facility or other secure facility, except as authorized by this  
41 section and by K.S.A. 2008 Supp. 38-2242, 38-2243 and 38-2260, and  
42 amendments thereto. It shall be the duty of the law enforcement officer  
43 to furnish to the county or district attorney, without unnecessary delay,

1 all the information in the possession of the officer pertaining to the child,  
2 the child's parents or other persons interested in or likely to be interested  
3 in the child and all other facts and circumstances which caused the child  
4 to be taken into custody.

5 (b) When any law enforcement officer takes into custody any child as  
6 provided in subsection (b)(2) of K.S.A. 2008 Supp. 38-2231, and amend-  
7 ments thereto, proceedings shall be initiated in accordance with the pro-  
8 visions of the interstate compact on juveniles, K.S.A. 38-1001 et seq., and  
9 amendments thereto, or K.S.A. 2008 Supp. 38-1008, and amendments  
10 thereto, when effective. Any child taken into custody pursuant to the  
11 interstate compact on juveniles may be detained in a juvenile detention  
12 facility or other secure facility.

13 (c) Whenever a child under the age of 18 years is taken into custody  
14 by a law enforcement officer without a court order and is thereafter  
15 placed as authorized by subsection (a), the facility or person shall, upon  
16 written application of the law enforcement officer, have physical custody  
17 and provide care and supervision for the child. The application shall state:

- 18 (1) The name and address of the child, if known;
- 19 (2) the names and addresses of the child's parents or nearest relatives  
20 and persons with whom the child has been residing, if known; and
- 21 (3) the officer's belief that the child is a child in need of care and that  
22 there are reasonable grounds to believe that the circumstances or condi-  
23 tion of the child is such that the child would be harmed unless placed  
24 in the immediate custody of the shelter facility or other person.

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

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

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

36 (g) When any law enforcement officer takes into custody any child as  
37 provided in subsection (d) of K.S.A. 2008 Supp. 38-2231, and amend-  
38 ments thereto, the child shall forthwith be delivered to the school in  
39 which the child is enrolled, any location designated by the school in which  
40 the child is enrolled or the child's parent or other custodian.

41 Sec. 2. K.S.A. 2008 Supp. 38-2242 is hereby amended to read as  
42 follows: 38-2242. (a) The court, upon verified application, may issue ex  
43 parte an order directing that a child be held in protective custody and, if

1 the child has not been taken into custody, an order directing that the  
2 child be taken into custody. The application shall state for each child:

- 3 (1) The applicant's belief that the child is a child in need of care;  
4 (2) that the child is likely to sustain harm if not immediately removed  
5 from the home;  
6 (3) that allowing the child to remain in the home is contrary to the  
7 welfare of the child; and  
8 (4) the facts relied upon to support the application, including efforts  
9 known to the applicant to maintain the family unit and prevent the un-  
10 necessary removal of the child from the child's home, or the specific facts  
11 supporting that an emergency exists which threatens the safety of the  
12 child.

13 (b) (1) The order of protective custody may be issued only after the  
14 court has determined there is probable cause to believe the allegations  
15 in the application are true. The order shall remain in effect until the  
16 temporary custody hearing provided for in K.S.A. 2008 Supp. 38-2243,  
17 and amendments thereto, unless earlier rescinded by the court.

18 (2) No child shall be held in protective custody for more than 72  
19 hours, excluding Saturdays, Sundays and legal holidays, unless within the  
20 72-hour period a determination is made as to the necessity for temporary  
21 custody in a temporary custody hearing. The time spent in custody pur-  
22 suant to K.S.A. 2008 Supp. 38-2232, and amendments thereto, shall be  
23 included in calculating the 72-hour period. Nothing in this subsection  
24 shall be construed to mean that the child must remain in protective cus-  
25 tody for 72 hours. If a child is in the protective custody of the secretary,  
26 the secretary shall allow at least one supervised visit between the child  
27 and the parent or parents within such time period as the child is in pro-  
28 tective custody. The court may prohibit such supervised visit if the court  
29 determines it is not in the best interest of the child.

30 (c) (1) Whenever the court determines the necessity for an order of  
31 protective custody, the court may place the child in the protective custody  
32 of:

33 (A) A parent or other person having custody of the child and may  
34 enter a restraining order pursuant to subsection (e);

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

38 (C) a youth residential facility;

39 (D) a shelter facility; or

40 (E) the secretary, *if the child is 15 years of age or younger, or 16 or*  
41 *17 years of age if the child **has no identifiable parental or family***  
42 ***resources or shows signs of physical, mental, emotional or sexual abuse.***

43 (2) If the secretary presents the court with a plan to provide services

1 to a child or family which the court finds will assure the safety of the  
2 child, the court may only place the child in the protective custody of the  
3 secretary until the court finds the services are in place. The court shall  
4 have the authority to require any person or entity agreeing to participate  
5 in the plan to perform as set out in the plan. When the child is placed in  
6 the protective custody of the secretary, the secretary shall have the dis-  
7 cretionary authority to place the child with a parent or to make other  
8 suitable placement for the child. When the child is presently alleged, but  
9 not yet adjudicated, to be a child in need of care solely pursuant to sub-  
10 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments  
11 thereto, the child may be placed in a juvenile detention facility or other  
12 secure facility pursuant to an order of protective custody for a period of  
13 not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

14 (d) The order of protective custody shall be served pursuant to sub-  
15 section (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on  
16 the child's parents and any other person having legal custody of the child.  
17 The order shall prohibit the removal of the child from the court's juris-  
18 diction without the court's permission.

19 (e) If the court issues an order of protective custody, the court may  
20 also enter an order restraining any alleged perpetrator of physical, sexual,  
21 mental or emotional abuse of the child from residing in the child's home;  
22 visiting, contacting, harassing or intimidating the child, other family mem-  
23 ber or witness; or attempting to visit, contact, harass or intimidate the  
24 child, other family member or witness. Such restraining order shall be  
25 served by personal service pursuant to subsection (a) of K.S.A. 2008 Supp.  
26 38-2237, and amendments thereto, on any alleged perpetrator to whom  
27 the order is directed.

28 (f) (1) The court shall not enter an order removing a child from the  
29 custody of a parent pursuant to this section unless the court first finds  
30 probable cause that: (A)(i) the child is likely to sustain harm if not im-  
31 mediately removed from the home;

32 (ii) allowing the child to remain in home is contrary to the welfare of  
33 the child; or

34 (iii) immediate placement of the child is in the best interest of the  
35 child; and

36 (B) reasonable efforts have been made to maintain the family unit  
37 and prevent the unnecessary removal of the child from the child's home  
38 or that an emergency exists which threatens the safety to the child.

39 (2) Such findings shall be included in any order entered by the court.  
40 If the child is placed in the custody of the secretary, the court shall provide  
41 the secretary with a written copy of any orders entered upon making the  
42 order.

43 Sec. 3. K.S.A. 2008 Supp. 38-2243 is hereby amended to read as

- 1 follows: 38-2243. (a) Upon notice and hearing, the court may issue an  
2 order directing who shall have temporary custody and may modify the  
3 order during the pendency of the proceedings as will best serve the child's  
4 welfare.
- 5 (b) A hearing pursuant to this section shall be held within 72 hours,  
6 excluding Saturdays, Sundays and legal holidays, following a child having  
7 been taken into protective custody.
- 8 (c) Whenever it is determined that a temporary custody hearing is  
9 required, the court shall immediately set the time and place for the hear-  
10 ing. Notice of a temporary custody hearing shall be given to all parties  
11 and interested parties.
- 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 or  
15 interested party, proceed with the hearing at the designated time. If an  
16 order of temporary custody is entered and the parent or other person  
17 having custody of the child has not been notified of the hearing, did not  
18 appear or waive appearance and requests a rehearing, the court shall  
19 rehear the matter without unnecessary 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.
- 23 (f) The court may enter an order of temporary custody after deter-  
24 mining there is probable cause to believe that the: (1) Child is dangerous  
25 to self or to others; (2) child is not likely to be available within the juris-  
26 diction of the court for future proceedings; or (3) health or welfare of the  
27 child may be endangered without further care.
- 28 (g) (1) Whenever the court determines the necessity for an order of  
29 temporary custody the court may place the child in the temporary custody of  
30 of:
- 31 (A) A parent or other person having custody of the child and may  
32 enter a restraining order pursuant to subsection (h);
- 33 (B) a person, other than the parent or other person having custody,  
34 who shall not be required to be licensed under article 5 of chapter 65 of  
35 the Kansas Statutes Annotated, and amendments thereto;
- 36 (C) a youth residential facility;
- 37 (D) a shelter facility; or
- 38 (E) the secretary, *if the child is 15 years of age or younger, or 16 or*  
39 *17 years of age if the child **has no identifiable parental or family***  
40 ***resources or shows signs of physical, mental, emotional or sexual abuse.***
- 41 (2) If the secretary presents the court with a plan to provide services  
42 to a child or family which the court finds will assure the safety of the  
43 child, the court may only place the child in the temporary custody of the

1 secretary until the court finds the services are in place. The court shall  
2 have the authority to require any person or entity agreeing to participate  
3 in the plan to perform as set out in the plan. When the child is placed in  
4 the temporary custody of the secretary, the secretary shall have the dis-  
5 cretionary authority to place the child with a parent or to make other  
6 suitable placement for the child. When the child is presently alleged, but  
7 not yet adjudicated to be a child in need of care solely pursuant to sub-  
8 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments  
9 thereto, the child may be placed in a juvenile detention facility or other  
10 secure facility, but the total amount of time that the child may be held in  
11 such facility under this section and K.S.A. 2008 Supp. 38-2242, and  
12 amendments thereto, shall not exceed 24 hours, excluding Saturdays,  
13 Sundays and legal holidays. The order of temporary custody shall remain  
14 in effect until modified or rescinded by the court or an adjudication order  
15 is entered but not exceeding 60 days, unless good cause is shown and  
16 stated on the record.

17 (h) If the court issues an order of temporary custody, the court may  
18 also enter an order restraining any alleged perpetrator of physical, sexual,  
19 mental or emotional abuse of the child from residing in the child's home;  
20 visiting, contacting, harassing or intimidating the child; or attempting to  
21 visit, contact, harass or intimidate the child, other family members or  
22 witnesses. Such restraining order shall be served by personal service pur-  
23 suant to subsection (a) of K.S.A. 2008 Supp. 38-2237, and amendments  
24 thereto, on any alleged perpetrator to whom the order is directed.

25 (i) (1) The court shall not enter an order removing a child from the  
26 custody of a parent pursuant to this section unless the court first finds  
27 probable cause that: (A)(i) the child is likely to sustain harm if not im-  
28 mediately removed from the home;

29 (ii) allowing the child to remain in home is contrary to the welfare of  
30 the child; or

31 (iii) immediate placement of the child is in the best interest of the  
32 child; and

33 (B) reasonable efforts have been made to maintain the family unit  
34 and prevent the unnecessary removal of the child from the child's home  
35 or that an emergency exists which threatens the safety to the child.

36 (2) Such findings shall be included in any order entered by the court.  
37 If the child is placed in the custody of the secretary, upon making the  
38 order the court shall provide the secretary with a written copy.

39 (j) If the court enters an order of temporary custody that provides  
40 for placement of the child with a person other than the parent, the court  
41 shall make a child support determination pursuant to K.S.A. 2008 Supp.  
42 38-2277, and amendments thereto.

43 Sec. 4. K.S.A. 2008 Supp. 38-2255 is hereby amended to read as

- 1 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-  
2 position, the court shall give consideration to:
- 3 (1) The child's physical, mental and emotional condition;
  - 4 (2) the child's need for assistance;
  - 5 (3) the manner in which the parent participated in the abuse, neglect  
6 or abandonment of the child;
  - 7 (4) any relevant information from the intake and assessment process;
  - 8 and
  - 9 (5) the evidence received at the dispositional hearing.
- 10 (b) *Placement with a parent*. The court may place the child in the  
11 custody of either of the child's parents subject to terms and conditions  
12 which the court prescribes to assure the proper care and protection of  
13 the child, including, but not limited to:
- 14 (1) Supervision of the child and the parent by a court services officer;
  - 15 (2) participation by the child and the parent in available programs  
16 operated by an appropriate individual or agency; and
  - 17 (3) any special treatment or care which the child needs for the child's  
18 physical, mental or emotional health and safety.
- 19 (c) *Removal of a child from custody of a parent*. The court shall not  
20 enter an order removing a child from the custody of a parent pursuant  
21 to this section unless the court first finds probable cause that: (1)(A) The  
22 child is likely to sustain harm if not immediately removed from the home;
- 23 (B) allowing the child to remain in home is contrary to the welfare  
24 of the child; or
  - 25 (C) immediate placement of the child is in the best interest of the  
26 child; and
  - 27 (2) reasonable efforts have been made to maintain the family unit  
28 and prevent the unnecessary removal of the child from the child's home  
29 or that an emergency exists which threatens the safety to the child.
- 30 (d) *Custody of a child removed from the custody of a parent*. If the  
31 court has made the findings required by subsection (c), the court shall  
32 enter an order awarding custody to a relative of the child or to a person  
33 with whom the child has close emotional ties, to any other suitable person,  
34 to a shelter facility, to a youth residential facility or, *if the child is 15 years*  
35 *of age or younger, or 16 or 17 years of age if the child **has no identifiable***  
36 ***parental or family resources or shows signs of physical, mental, emo-***  
37 ***tional or sexual abuse***, to the secretary. Custody awarded under this sub-  
38 section shall continue until further order of the court.
- 39 (1) When custody is awarded to the secretary, the secretary shall con-  
40 sider any placement recommendation by the court and notify the court  
41 of the placement or proposed placement of the child within 10 days of  
42 the order awarding custody.
  - 43 (A) After providing the parties or interested parties notice and op-

1 portunity to be heard, the court may determine whether the secretary's  
2 placement or proposed placement is contrary to the welfare or in the best  
3 interests of the child. In making that determination the court shall con-  
4 sider the health and safety needs of the child and the resources available  
5 to meet the needs of children in the custody of the secretary. If the court  
6 determines that the placement or proposed placement is contrary to the  
7 welfare or not in the best interests of the child, the court shall notify the  
8 secretary, who shall then make an alternative placement.

9 (B) The secretary may propose and the court may order the child to  
10 be placed in the custody of a parent or parents if the secretary has pro-  
11 vided and the court has approved an appropriate safety action plan which  
12 includes services to be provided. The court may order the parent or par-  
13 ents and the child to perform tasks as set out in the safety action plan.

14 (2) The custodian designated under this subsection shall notify the  
15 court in writing at least 10 days prior to any planned placement with a  
16 parent. The written notice shall state the basis for the custodian's belief  
17 that placement with a parent is no longer contrary to the welfare or best  
18 interest of the child. Upon reviewing the notice, the court may allow the  
19 custodian to proceed with the planned placement or may set the date for  
20 a hearing to determine if the child shall be allowed to return home. If  
21 the court sets a hearing on the matter, the custodian shall not return the  
22 child home without written consent of the court.

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

26 (4) The court may enter an order restraining any alleged perpetrator  
27 of physical, mental or emotional abuse or sexual abuse of the child from  
28 residing in the child's home; visiting, contacting, harassing or intimidating  
29 the child, other family member or witness; or attempting to visit, contact,  
30 harass or intimidate the child, other family member or witness. Such  
31 restraining order shall be served by personal service pursuant to subsec-  
32 tion (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on any  
33 alleged perpetrator to whom the order is directed.

34 (5) The court shall provide a copy of any orders entered within 10  
35 days of entering the order to the custodian designated under this  
36 subsection.

37 (e) *Further determinations regarding a child removed from the home.*  
38 If custody has been awarded under subsection (d) to a person other than  
39 a parent, a permanency plan shall be provided or prepared pursuant to  
40 K.S.A. 2008 Supp. 38-2264, and amendments thereto. If a permanency  
41 plan is provided at the dispositional hearing, the court may determine  
42 whether reintegration is a viable alternative or, if reintegration is not a  
43 viable alternative, whether the child should be placed for adoption or a



- 1 permanent custodian appointed. In determining whether reintegration is  
2 a viable alternative, the court shall consider:
- 3 (1) Whether a parent has been found by a court to have committed  
4 one of the following crimes or to have violated the law of another state  
5 prohibiting such crimes or to have aided and abetted, attempted, con-  
6 spired or solicited the commission of one of these crimes: Murder in the  
7 first degree, K.S.A. 21-3401, and amendments thereto, murder in the  
8 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,  
9 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.  
10 21-3403, and amendments thereto, or a felony battery that resulted in  
11 bodily injury;
- 12 (2) whether a parent has subjected the child or another child to ag-  
13 gravated circumstances;
- 14 (3) whether a parent has previously been found to be an unfit parent  
15 in proceedings under this code or in comparable proceedings under the  
16 laws of another state or the federal government;
- 17 (4) whether the child has been in extended out of home placement;
- 18 (5) whether the parents have failed to work diligently toward  
19 reintegration;
- 20 (6) whether the secretary has provided the family with services nec-  
21 essary for the safe return of the child to the home; and
- 22 (7) whether it is reasonable to expect reintegration to occur within a  
23 time frame consistent with the child's developmental needs.
- 24 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
25 determines that reintegration is not a viable alternative, proceedings to  
26 terminate parental rights and permit placement of the child for adoption  
27 or appointment of a permanent custodian shall be initiated unless the  
28 court finds that compelling reasons have been documented in the case  
29 plan why adoption or appointment of a permanent custodian would not  
30 be in the best interests of the child. If compelling reasons have not been  
31 documented, the county or district attorney shall file a motion within 30  
32 days to terminate parental rights or a motion to appoint a permanent  
33 custodian within 30 days and the court shall hold a hearing on the motion  
34 within 90 days of its filing. No hearing is required when the parents  
35 voluntarily relinquish parental rights or consent to the appointment of a  
36 permanent custodian.
- 37 (g) *Additional Orders.* In addition to or in lieu of any other order  
38 authorized by this section:
- 39 (1) The court may order the child and the parents of any child who  
40 has been adjudicated a child in need of care to attend counseling sessions  
41 as the court directs. The expense of the counseling may be assessed as  
42 an expense in the case. No mental health provider shall charge a greater  
43 fee for court-ordered counseling than the provider would have charged

1 to the person receiving counseling if the person had requested counseling  
2 on the person's own initiative.

3 (2) If the court has reason to believe that a child is before the court  
4 due, in whole or in part, to the use or misuse of alcohol or a violation of  
5 the uniform controlled substances act by the child, a parent of the child,  
6 or another person responsible for the care of the child, the court may  
7 order the child, parent of the child or other person responsible for the  
8 care of the child to submit to and complete an alcohol and drug evaluation  
9 by a qualified person or agency and comply with any recommendations.  
10 If the evaluation is performed by a community-based alcohol and drug  
11 safety program certified pursuant to K.S.A. 8-1008, and amendments  
12 thereto, the child, parent of the child or other person responsible for the  
13 care of the child shall pay a fee not to exceed the fee established by that  
14 statute. If the court finds that the child and those legally liable for the  
15 child's support are indigent, the fee may be waived. In no event shall the  
16 fee be assessed against the secretary.

17 (3) If child support has been requested and the parent or parents  
18 have a duty to support the child, the court may order one or both parents  
19 to pay child support and, when custody is awarded to the secretary, the  
20 court shall order one or both parents to pay child support. The court shall  
21 determine, for each parent separately, whether the parent is already sub-  
22 ject to an order to pay support for the child. If the parent is not presently  
23 ordered to pay support for any child who is subject to the jurisdiction of  
24 the court and the court has personal jurisdiction over the parent, the court  
25 shall order the parent to pay child support in an amount determined  
26 under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for  
27 good cause shown, the court shall issue an immediate income withholding  
28 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for  
29 each parent ordered to pay support under this subsection, regardless of  
30 whether a payor has been identified for the parent. A parent ordered to  
31 pay child support under this subsection shall be notified, at the hearing  
32 or otherwise, that the child support order may be registered pursuant to  
33 K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall  
34 also be informed that, after registration, the income withholding order  
35 may be served on the parent's employer without further notice to the  
36 parent and the child support order may be enforced by any method al-  
37 lowed by law. Failure to provide this notice shall not affect the validity of  
38 the child support order.

39 Sec. 5. K.S.A. 2008 Supp. 38-2232, 38-2242, 38-2243 and 38-2255  
40 are hereby repealed.

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