

HOUSE BILL No. 2142

By Committee on Children and Families

2-3

1 AN ACT concerning children in need of care; relating to the powers of
2 the court; amending K.S.A. 75-3330 and K.S.A. 2010 Supp. 38-2242,
3 38-2243, 38-2252, 38-2255, 38-2258, 38-2259, 38-2263, 38-2264 and
4 38-2270 and repealing the existing sections; also repealing K.S.A.
5 2010 Supp. 38-2255a and 38-2258a.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2010 Supp. 38-2242 is hereby amended to read as
9 follows: 38-2242. (a) The court, upon verified application, may issue ex
10 parte an order directing that a child be held in protective custody and, if
11 the child has not been taken into custody, an order directing that the child
12 be taken into custody. The application shall state for each child:

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

14 (2) that the child is likely to sustain harm if not immediately
15 removed from the home;

16 (3) that allowing the child to remain in the home is contrary to the
17 welfare of the child; and

18 (4) the facts relied upon to support the application, including efforts
19 known to the applicant to maintain the family unit and prevent the
20 unnecessary removal of the child from the child's home, or the specific
21 facts supporting that an emergency exists which threatens the safety of
22 the child.

23 (b) (1) The order of protective custody may be issued only after the
24 court has determined there is probable cause to believe the allegations in
25 the application are true. The order shall remain in effect until the
26 temporary custody hearing provided for in K.S.A. 2010 Supp. 38-2243,
27 and amendments thereto, unless earlier rescinded by the court.

28 (2) No child shall be held in protective custody for more than 72
29 hours, excluding Saturdays, Sundays, legal holidays; and days on which
30 the office of the clerk of the court is not accessible, unless within the 72-
31 hour period a determination is made as to the necessity for temporary
32 custody in a temporary custody hearing. The time spent in custody
33 pursuant to K.S.A. 2010 Supp. 38-2232, and amendments thereto, shall
34 be included in calculating the 72-hour period. Nothing in this subsection
35 shall be construed to mean that the child must remain in protective
36 custody for 72 hours. If a child is in the protective custody of the

1 secretary, the secretary shall allow at least one supervised visit between
2 the child and the parent or parents within such time period as the child is
3 in protective custody. The court may prohibit such supervised visit if the
4 court determines it is not in the best interest of the child.

5 (c) (1) Whenever the court determines the necessity for an order of
6 protective custody, the court may place the child in the protective custody
7 of:

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

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

13 (C) a youth residential facility;

14 (D) a shelter facility; or

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

18 (2) If the secretary presents the court with a plan to provide services
19 to a child or family which the court finds will assure the safety of the
20 child, the court may only place the child in the protective custody of the
21 secretary until the court finds the services are in place. The court shall
22 have the authority to require any person or entity agreeing to participate
23 in the plan to perform as set out in the plan. When the child is placed in
24 the protective custody of the secretary, the secretary shall ~~have the~~
25 ~~discretionary authority to place the child with a parent or to make other~~
26 ~~suitable placement for~~ *present to the court the secretary's*
27 *recommendation for placement of the child. The court shall consider the*
28 *secretary's placement recommendation in ordering temporary placement*
29 *of the child. If the court does not place the child according to the*
30 *secretary's placement recommendation, the reasons for denying such*
31 *placement shall be set forth in the court's order. When the child is*
32 *presently alleged, but not yet adjudicated, to be a child in need of care*
33 *solely pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2010 Supp. 38-*
34 *2202, and amendments thereto, the child may be placed in a juvenile*
35 *detention facility or other secure facility pursuant to an order of*
36 *protective custody for a period of not to exceed 24 hours, excluding*
37 *Saturdays, Sundays, legal holidays; and days on which the office of the*
38 *clerk of the court is not accessible.*

39 (d) The order of protective custody shall be served pursuant to
40 subsection (a) of K.S.A. 2010 Supp. 38-2237, and amendments thereto,
41 on the child's parents and any other person having legal custody of the
42 child. The order shall prohibit the removal of the child from the court's
43 jurisdiction without the court's permission.

1 (e) If the court issues an order of protective custody, the court may
2 also enter an order restraining any alleged perpetrator of physical, sexual,
3 mental or emotional abuse of the child from residing in the child's home;
4 visiting, contacting, harassing or intimidating the child, other family
5 member or witness; or attempting to visit, contact, harass or intimidate
6 the child, other family member or witness. Such restraining order shall be
7 served by personal service pursuant to subsection (a) of K.S.A. 2010
8 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to
9 whom the order is directed.

10 (f) (1) The court shall not enter the initial order removing a child
11 from the custody of a parent pursuant to this section unless the court first
12 finds probable cause that: (A)(i) the child is likely to sustain harm if not
13 immediately removed from the home;

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

16 (iii) immediate placement of the child is in the best interest of the
17 child; and

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

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

25 (g) *The court, in issuing an order under this section, may also set*
26 *forth where the child shall not be placed.*

27 Sec. 2. K.S.A. 2010 Supp. 38-2243 is hereby amended to read as
28 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
29 order directing who shall have temporary custody and may modify the
30 order during the pendency of the proceedings as will best serve the child's
31 welfare.

32 (b) A hearing pursuant to this section shall be held within 72 hours,
33 excluding Saturdays, Sundays, legal holidays; and days on which the
34 office of the clerk of the court is not accessible, following a child having
35 been taken into protective custody.

36 (c) Whenever it is determined that a temporary custody hearing is
37 required, the court shall immediately set the time and place for the
38 hearing. Notice of a temporary custody hearing shall be given to all
39 parties and interested parties.

40 (d) Notice of the temporary custody hearing shall be given at least
41 24 hours prior to the hearing. The court may continue the hearing to
42 afford the 24 hours prior notice or, with the consent of the party or
43 interested party, proceed with the hearing at the designated time. If an

1 order of temporary custody is entered and the parent or other person
2 having custody of the child has not been notified of the hearing, did not
3 appear or waive appearance and requests a rehearing, the court shall
4 rehear the matter without unnecessary delay.

5 (e) Oral notice may be used for giving notice of a temporary custody
6 hearing where there is insufficient time to give written notice. Oral notice
7 is completed upon filing a certificate of oral notice.

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

13 (g) (1) Whenever the court determines the necessity for an order of
14 temporary custody, the court may place the child in the temporary
15 custody of:

16 (A) A parent or other person having custody of the child and may
17 enter a restraining order pursuant to subsection (h);

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

21 (C) a youth residential facility;

22 (D) a shelter facility; or

23 (E) the secretary, if the child is 15 years of age or younger, or 16 or
24 17 years of age if the child has no identifiable parental or family
25 resources or shows signs of physical, mental, emotional or sexual abuse.

26 (2) If the secretary presents the court with a plan to provide services
27 to a child or family which the court finds will assure the safety of the
28 child, the court may only place the child in the temporary custody of the
29 secretary until the court finds the services are in place. The court shall
30 have the authority to require any person or entity agreeing to participate
31 in the plan to perform as set out in the plan. When the child is placed in
32 the temporary custody of the secretary, the secretary shall ~~have the~~
33 ~~discretionary authority to place the child with a parent or to make other~~
34 ~~suitable placement for present to the court the secretary's~~
35 *recommendations for placement of the child. The court shall consider the*
36 *secretary's placement recommendation in ordering temporary placement*
37 *of the child. If the court does not place the child according to the*
38 *secretary's placement recommendation, the reasons for denying such*
39 *placement shall be set forth in the court's order. The court may also order*
40 *where the child may not be placed.* When the child is presently alleged,
41 but not yet adjudicated to be a child in need of care solely pursuant to
42 subsection (d)(9) or (d)(10) of K.S.A. 2010 Supp. 38-2202, and
43 amendments thereto, the child may be placed in a juvenile detention

1 facility or other secure facility, but the total amount of time that the child
2 may be held in such facility under this section and K.S.A. 2010 Supp. 38-
3 2242, and amendments thereto, shall not exceed 24 hours, excluding
4 Saturdays, Sundays, legal holidays; and days on which the office of the
5 clerk of the court is not accessible. The order of temporary custody shall
6 remain in effect until modified or rescinded by the court or an
7 adjudication order is entered, but not exceeding 60 days, unless good
8 cause is shown and stated on the record.

9 (h) If the court issues an order of temporary custody, the court may
10 also enter an order restraining any alleged perpetrator of physical, sexual,
11 mental or emotional abuse of the child from residing in the child's home;
12 visiting, contacting, harassing or intimidating the child; or attempting to
13 visit, contact, harass or intimidate the child, other family members or
14 witnesses. Such restraining order shall be served by personal service
15 pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and
16 amendments thereto, on any alleged perpetrator to whom the order is
17 directed.

18 (i) (1) The court shall not enter the initial order removing a child
19 from the custody of a parent pursuant to this section unless the court first
20 finds probable cause that: (A)(i) the child is likely to sustain harm if not
21 immediately removed from the home;

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

24 (iii) immediate placement of the child is in the best interest of the
25 child; and

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

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

32 (j) If the court enters an order of temporary custody that provides for
33 placement of the child with a person other than the parent, the court shall
34 make a child support determination pursuant to K.S.A. 2010 Supp. 38-
35 2277, and amendments thereto.

36 Sec. 3. K.S.A. 2010 Supp. 38-2252 is hereby amended to read as
37 follows: 38-2252. (a) Before placement pursuant to this code of a child
38 with a person other than the child's parent, the secretary, the court or the
39 court services officer, at the direction of the court, may convene a
40 conference of persons determined by the court, the secretary or the court
41 services officer to have a potential interest in determining a placement
42 which is in the best interests of the child. Such persons shall be given any
43 information relevant to the determination of the placement of the child,

1 including the needs of the child and any other information that would be
2 helpful in making a placement in the best interests of the child. After
3 presentation of the information, such persons shall be permitted to discuss
4 and recommend to the secretary or the court services officer the person or
5 persons with whom it would be in the child's best interest to be placed.
6 Unless the secretary or the court services officer determines that there is
7 good cause to place the child with a person other than as recommended
8 *by the conference of persons*, the child shall be placed in accordance with
9 the recommendations *upon order of the court*. *If the court does not place*
10 *the child as recommended by the conference of persons, the reasons for*
11 *denying such placement shall be set forth in the court's orders.*

12 (b) A person participating in a conference pursuant to this section
13 shall have immunity from any civil liability that might otherwise be
14 incurred or imposed as a result of the person's participation.

15 Sec. 4. K.S.A. 2010 Supp. 38-2255 is hereby amended to read as
16 follows: 38-2255. (a) *Considerations*. Prior to entering an order of
17 disposition, the court shall give consideration to:

- 18 (1) The child's physical, mental and emotional condition;
- 19 (2) the child's need for assistance;
- 20 (3) the manner in which the parent participated in the abuse, neglect
21 or abandonment of the child;
- 22 (4) any relevant information from the intake and assessment process;
- 23 and
- 24 (5) the evidence received at the dispositional hearing.

25 (b) *Custody with a parent*. The court may place the child in the
26 custody of either of the child's parents subject to terms and conditions
27 which the court prescribes to assure the proper care and protection of the
28 child, including, but not limited to:

- 29 (1) Supervision of the child and the parent by a court services
30 officer;
- 31 (2) participation by the child and the parent in available programs
32 operated by an appropriate individual or agency; and
- 33 (3) any special treatment or care which the child needs for the child's
34 physical, mental or emotional health and safety.

35 (c) *Removal of a child from custody of a parent*. The court shall not
36 enter the initial order removing a child from the custody of a parent
37 pursuant to this section unless the court first finds probable cause that: (1)

38 (A) The child is likely to sustain harm if not immediately removed from
39 the home;

40 (B) allowing the child to remain in home is contrary to the welfare
41 of the child; or

42 (C) immediate placement of the child is in the best interest of the
43 child; and

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

4 (d) *Custody of a child removed from the custody of a parent.* If the
5 court has made the findings required by subsection (c), the court shall
6 ~~enter~~ *give priority to entering* an order awarding custody to a relative of
7 the child or to a person with whom the child has close emotional ties who
8 shall not be required to be licensed under article 5 of chapter 65 of the
9 Kansas Statutes Annotated, and amendments thereto; *If the court does*
10 *not award custody to a relative of the child or to a person with whom the*
11 *child has close emotional ties, the court shall set out its reasons for not*
12 *ordering such placement in the court's order. Upon the court's refusal to*
13 *place the child with a relative or a person with whom the child has close*
14 *emotional ties, the court may award custody* to any other suitable person,
15 to a shelter facility, to a youth residential facility or, if the child is 15
16 years of age or younger, or 16 or 17 years of age if the child has no
17 identifiable parental or family resources or shows signs of physical,
18 mental, emotional or sexual abuse, to the secretary. Custody awarded
19 under this subsection shall continue until further order of the court.

20 (1) When custody is awarded to the secretary, the secretary shall
21 ~~consider any placement recommendation by the court and~~ notify the court
22 of the ~~placement or~~ secretary's proposed placement of the child within
23 ~~14~~ 14 days of the order awarding custody.

24 (A) After providing the parties or interested parties notice and
25 opportunity to be heard, the court ~~may~~ shall determine whether the
26 secretary's placement or proposed placement is contrary to the welfare or
27 in the best interests of the child. In making that determination the court
28 shall consider the health and safety needs of the child and the resources
29 available to meet the needs of children in the custody of the secretary. If
30 the court determines that the ~~placement or~~ proposed placement is contrary
31 to the welfare or not in the best interests of the child, the court shall notify
32 the secretary, ~~who~~ *of the reasons for denial of such placement. The*
33 *secretary shall then make an alternative proposal of placement to the*
34 *court. The court shall consider the secretary's proposed alternative*
35 *placement. If the court agrees with the proposed placement, the court*
36 *shall issue an order of placement. If the court denies such placement, it*
37 *shall set forth its reasons for doing so in the order of placement for the*
38 *child.*

39 (B) *Placement and change of placement of a child under custody of*
40 *the secretary shall be made upon an order of placement by the court.*

41 (2) The custodian designated under this subsection shall notify the
42 court in writing at least ~~14~~ 14 days prior to any planned placement with a
43 parent. The written notice shall state the basis for the custodian's belief

1 that placement with a parent is no longer contrary to the welfare or best
2 interest of the child. Upon reviewing the notice, the court may allow the
3 custodian to proceed with the planned placement or may set the date for a
4 hearing to determine if the child shall be allowed to return home. If the
5 court sets a hearing on the matter, the custodian shall not return the child
6 home without written consent of the court.

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

10 (4) The court may enter an order restraining any alleged perpetrator
11 of physical, mental or emotional abuse or sexual abuse of the child from
12 residing in the child's home; visiting, contacting, harassing or
13 intimidating the child, other family member or witness; or attempting to
14 visit, contact, harass or intimidate the child, other family member or
15 witness. Such restraining order shall be served by personal service
16 pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and
17 amendments thereto, on any alleged perpetrator to whom the order is
18 directed.

19 (5) The court shall provide a copy of any orders entered within ~~10~~14
20 days of entering the order to the custodian designated under this
21 subsection.

22 (e) *Further determinations regarding a child removed from the*
23 *home.* If custody has been awarded under subsection (d) to a person other
24 than a parent, a permanency plan shall be provided or prepared pursuant
25 to K.S.A. 2010 Supp. 38-2264, and amendments thereto. If a permanency
26 plan is provided at the dispositional hearing, the court may determine
27 whether reintegration is a viable alternative or, if reintegration is not a
28 viable alternative, whether the child should be placed for adoption or a
29 permanent custodian appointed. In determining whether reintegration is a
30 viable alternative, the court shall consider:

31 (1) Whether a parent has been found by a court to have committed
32 one of the following crimes or to have violated the law of another state
33 prohibiting such crimes or to have aided and abetted, attempted,
34 conspired or solicited the commission of one of these crimes: (A) Murder
35 in the first degree, K.S.A. 21-3401 *prior to its repeal, or section 37 of*
36 *chapter 136 of the 2010 Session Laws of Kansas,* and amendments
37 thereto;; (B) murder in the second degree, K.S.A. 21-3402 *prior to its*
38 *repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas,*
39 and amendments thereto;; (C) capital murder, K.S.A. 21-3439 *prior to its*
40 *repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas,*
41 and amendments thereto;; (D) voluntary manslaughter, K.S.A. 21-3403
42 *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws*
43 *of Kansas,* and amendments thereto;; or a felony battery that resulted in

1 bodily injury;

2 (2) whether a parent has subjected the child or another child to
3 aggravated circumstances;

4 (3) whether a parent has previously been found to be an unfit parent
5 in proceedings under this code or in comparable proceedings under the
6 laws of another state or the federal government;

7 (4) whether the child has been in extended out-of-home placement;

8 (5) whether the parents have failed to work diligently toward
9 reintegration;

10 (6) whether the secretary has provided the family with services
11 necessary for the safe return of the child to the home; and

12 (7) whether it is reasonable to expect reintegration to occur within a
13 time frame consistent with the child's developmental needs.

14 (f) *Proceedings if reintegration is not a viable alternative.* If the
15 court determines that reintegration is not a viable alternative, proceedings
16 to terminate parental rights and permit placement of the child for
17 adoption or appointment of a permanent custodian shall be initiated
18 unless the court finds that compelling reasons have been documented in
19 the case plan why adoption or appointment of a permanent custodian
20 would not be in the best interests of the child. If compelling reasons have
21 not been documented, the county or district attorney shall file a motion
22 within 30 days to terminate parental rights or a motion to appoint a
23 permanent custodian within 30 days and the court shall hold a hearing on
24 the motion within 90 days of its filing. No hearing is required when the
25 parents voluntarily relinquish parental rights or consent to the
26 appointment of a permanent custodian.

27 (g) *Additional orders.* In addition to or in lieu of any other order
28 authorized by this section:

29 (1) The court may order the child and the parents of any child who
30 has been adjudicated a child in need of care to attend counseling sessions
31 as the court directs. The expense of the counseling may be assessed as an
32 expense in the case. No mental health provider shall charge a greater fee
33 for court-ordered counseling than the provider would have charged to the
34 person receiving counseling if the person had requested counseling on the
35 person's own initiative.

36 (2) If the court has reason to believe that a child is before the court
37 due, in whole or in part, to the use or misuse of alcohol or a violation of
38 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,
39 by the child, a parent of the child, or another person responsible for the
40 care of the child, the court may order the child, parent of the child or
41 other person responsible for the care of the child to submit to and
42 complete an alcohol and drug evaluation by a qualified person or agency
43 and comply with any recommendations. If the evaluation is performed by

1 a community-based alcohol and drug safety program certified pursuant to
2 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
3 other person responsible for the care of the child shall pay a fee not to
4 exceed the fee established by that statute. If the court finds that the child
5 and those legally liable for the child's support are indigent, the fee may be
6 waived. In no event shall the fee be assessed against the secretary.

7 (3) If child support has been requested and the parent or parents
8 have a duty to support the child, the court may order one or both parents
9 to pay child support and, when custody is awarded to the secretary, the
10 court shall order one or both parents to pay child support. The court shall
11 determine, for each parent separately, whether the parent is already
12 subject to an order to pay support for the child. If the parent is not
13 presently ordered to pay support for any child who is subject to the
14 jurisdiction of the court and the court has personal jurisdiction over the
15 parent, the court shall order the parent to pay child support in an amount
16 determined under K.S.A. 2010 Supp. 38-2277, and amendments thereto.
17 Except for good cause shown, the court shall issue an immediate income
18 withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments
19 thereto, for each parent ordered to pay support under this subsection,
20 regardless of whether a payor has been identified for the parent. A parent
21 ordered to pay child support under this subsection shall be notified, at the
22 hearing or otherwise, that the child support order may be registered
23 pursuant to K.S.A. 2010 Supp. 38-2279, and amendments thereto. The
24 parent shall also be informed that, after registration, the income
25 withholding order may be served on the parent's employer without further
26 notice to the parent and the child support order may be enforced by any
27 method allowed by law. Failure to provide this notice shall not affect the
28 validity of the child support order.

29 Sec. 5. K.S.A. 2010 Supp. 38-2258 is hereby amended to read as
30 follows: 38-2258. (a) Except as provided in K.S.A. 2010 Supp. 38-
31 2255(d)(2) and 38-2259, and amendments thereto, if a child has been in
32 the same foster home or shelter facility for six months or longer, or has
33 been placed by the ~~secretary~~ court in the home of a parent or relative, the
34 secretary shall give written notice of any plan to move the child to a
35 different placement ~~unless~~ including when the move is to the selected
36 preadoptive family for the purpose of facilitating adoption. The notice
37 shall be given to: (1) The court having jurisdiction over the child; (2) the
38 petitioner; (3) the attorney for the parents, if any; (4) each parent whose
39 address is available; (5) the foster parent or custodian from whose home
40 or shelter facility it is proposed to remove the child; (6) the child, if 12 or
41 more years of age; (7) the child's guardian ad litem; (8) any other party or
42 interested party; and (9) the child's court-appointed special advocate.

43 (b) The notice shall state the placement to which the secretary

1 ~~plans~~ *proposes* to transfer the child and the reason for the proposed action.
2 The notice shall be mailed by first class mail 30 days in advance of the
3 planned transfer, except that the secretary shall not be required to wait 30
4 days to transfer the child if all persons enumerated in subsection (a)(2)
5 through (8) consent in writing to the transfer *and the court orders such*
6 *placement.*

7 (c) Within ~~10~~14 days after receipt of the notice, any person
8 enumerated in subsection (a)(2) through (8) receiving notice as provided
9 above may request, either orally or in writing, that the court conduct a
10 hearing to determine whether or not the change in placement is in the best
11 interests of the child concerned. When the request has been received, the
12 court shall schedule a hearing and immediately notify the secretary of the
13 request and the time and date the matter will be heard. The court shall
14 give notice of the hearing to persons enumerated in subsection (a)(2)
15 through (9). If the court does not receive a request for hearing within the
16 specified time, the change in placement may occur prior to the expiration
17 of the 30 days *if ordered by the court.* The secretary shall not change the
18 placement of the child, ~~except for the purpose of adoption,~~ unless the
19 change is ~~approved~~ *ordered by the court.*

20 (d) When, after the notice set out above, a child in the custody of the
21 secretary is removed from the home of a parent after having been placed
22 in the home of a parent for a period of six months or longer, the secretary
23 shall request a finding that: (1)(A) The child is likely to sustain harm if
24 not immediately removed from the home;

25 (B) allowing the child to remain in home is contrary to the welfare
26 of the child; or

27 (C) immediate placement of the child is in the best interest of the
28 child; and

29 (2) reasonable efforts have been made to maintain the family unit
30 and prevent the unnecessary removal of the child from the child's home
31 or that an emergency exists which threatens the safety ~~to~~of the child.

32 (e) The secretary shall present to the court in writing the efforts to
33 maintain the family unit and prevent the unnecessary removal of the child
34 from the child's home. In making the findings, the court may rely on
35 documentation submitted by the secretary or may set the date for a
36 hearing on the matter. If the secretary requests such finding, the court, not
37 more than 45 days from the date of the request, shall provide the
38 secretary with a written copy of the findings by the court for the purpose
39 of documenting these orders.

40 Sec. 6. K.S.A. 2010 Supp. 38-2259 is hereby amended to read as
41 follows: 38-2259. (a) When an emergency exists requiring immediate
42 action to assure the safety and protection of the child or the secretary is
43 notified that the foster parents or shelter facility refuse to allow the child

1 to remain, the secretary may transfer the child to another foster home or
2 shelter facility without prior court approval. The secretary shall notify the
3 court of the action at the earliest practical time. When the child is
4 removed from the home of a parent after having been placed in the home
5 for a period of six months or longer, the secretary shall present to the
6 court in writing the specific nature of the emergency and reasons why it is
7 contrary to the welfare of the child to remain in the placement and request
8 a finding by the court whether remaining in the home is contrary to the
9 welfare of the child. ~~If The court enters an order the court~~*upon weighing*
10 *the evidence presented* shall make a finding as to whether an emergency
11 exists. *Upon a finding by the court that an emergency exists, the court*
12 *shall issue a temporary placement order for the child.* The court shall
13 provide the secretary *and the child's parents* with a copy of the order. In
14 making the finding, the court may rely on documentation submitted by
15 the secretary or may set the date for a hearing on the matter. If the
16 secretary requests such a finding, the court shall provide the secretary
17 with a written copy of the finding by the court not more than 45 days
18 from the date of the request.

19 (b) The court shall not enter an order approving the removal of a
20 child from the home of a parent pursuant to this section unless the court
21 first finds probable cause that: (1)(A) The child is likely to sustain harm if
22 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~~*of* the child.

30 Sec. 7. K.S.A. 2010 Supp. 38-2263 is hereby amended to read as
31 follows: 38-2263. (a) The goal of permanency planning is to assure, in so
32 far as is possible, that children have permanency and stability in their
33 living situations and that the continuity of family relationships and
34 connections is preserved. In planning for permanency, the safety and
35 well-being of children shall be paramount.

36 (b) Whenever a child is subject to the jurisdiction of the court
37 pursuant to the code, an initial permanency plan shall be developed for
38 the child and submitted to the court within 30 days of the initial order of
39 the court. If the child is in the custody of the secretary, or the secretary is
40 providing services to the child, the secretary shall prepare the plan.
41 Otherwise, the plan shall be prepared by the person who has custody or, if
42 directed by the court, by a court services officer.

43 (c) A permanency plan is a written document prepared, where

- 1 possible, in consultation with the child's parents and which:
- 2 (1) Describes the permanency goal which, if achieved, will most
3 likely give the child a permanent and safe living arrangement;
- 4 (2) describes the child's level of physical health, mental and
5 emotional health, and educational functioning;
- 6 (3) provides an assessment of the needs of the child and family;
- 7 (4) describes the services to be provided the child, the child's parents
8 and the child's foster parents, if appropriate;
- 9 (5) includes a description of the tasks and responsibilities designed
10 to achieve the plan and to whom assigned; and
- 11 (6) includes measurable objectives and time schedules for achieving
12 the plan.
- 13 (d) In addition to the requirements of subsection (c), if the child is in
14 an out-of-home placement, the permanency plan shall include:
- 15 (1) A plan for reintegration of the child's parent or parents or if
16 reintegration is determined not to be a viable alternative, a statement for
17 the basis of that conclusion and a plan for another permanent living
18 arrangement;
- 19 (2) a description of the available placement alternatives;
- 20 (3) a justification for the placement selected, including a description
21 of the safety and appropriateness of the placement; and
- 22 (4) a description of the programs and services which will help the
23 child prepare to live independently as an adult.
- 24 (e) *The permanency plan and placement of the child under the plan*
25 *shall be approved by the court unless the court disapproves of the*
26 *permanency plan or placement whereupon the court shall set forth in its*
27 *order the court's reasons for denying the permanency plan or placement,*
28 *or both.*
- 29 (f) If there is a lack of agreement among persons necessary for the
30 success of the permanency plan, the person or entity having custody of
31 the child shall notify the court which shall set a hearing on the plan.
- 32 ~~(g)~~ (g) A permanency plan may be amended at any time upon
33 agreement of the plan participants *and order of the court*. If a permanency
34 plan requires amendment which changes the permanency goal, the person
35 or entity having custody of the child shall notify the court which shall set
36 a permanency hearing pursuant to K.S.A. 2010 Supp. 38-2264 and 38-
37 2265, and amendments thereto.
- 38 Sec. 8. K.S.A. 2010 Supp. 38-2264 is hereby amended to read as
39 follows: 38-2264. (a) A permanency hearing is a proceeding conducted by
40 the court or by a citizen review board for the purpose of determining
41 progress toward accomplishment of a permanency plan as established by
42 K.S.A. 2010 Supp. 38-2263, and amendments thereto.
- 43 (b) The court or a citizen review board shall hear and the court shall

1 determine whether and, if applicable, when the child will be:

2 (1) Reintegrated with the child's parents;

3 (2) placed for adoption;

4 (3) placed with a permanent custodian; or

5 (4) *placed in another planned permanent arrangement* if the
6 secretary has documented compelling reasons why it would not be in the
7 child's best interests for a placement in one of the placements pursuant to
8 paragraphs (1), (2) or (3) ~~placed in another planned permanent~~
9 ~~arrangement.~~

10 (c) The court shall enter a finding as to whether reasonable efforts
11 have been made by appropriate public or private agencies to rehabilitate
12 the family and achieve the permanency goal in place at the time of the
13 hearing.

14 (d) A permanency hearing shall be held within 12 months of the date
15 the court authorized the child's removal from the home and not less
16 frequently than every 12 months thereafter.

17 (e) If the court determines at any time other than during a
18 permanency hearing that reintegration may not be a viable alternative for
19 the child, a permanency hearing shall be held no later than 30 days
20 following that determination.

21 (f) When the court finds that reintegration continues to be a viable
22 alternative, the court shall determine whether and, if applicable, when the
23 child will be returned to the parent. The court may rescind any of its prior
24 dispositional orders and enter any dispositional order authorized by this
25 code or may order that a new plan for the reintegration be prepared and
26 submitted to the court. If reintegration cannot be accomplished as
27 ~~approved~~ *ordered* by the court, the court shall be informed and shall
28 schedule a hearing pursuant to this section. No such hearing is required
29 when the parents voluntarily relinquish parental rights or consent to
30 appointment of a permanent custodian.

31 (g) If the court finds reintegration is no longer a viable alternative,
32 the court shall consider whether: (1) The child is in a stable placement
33 with a relative; (2) services set out in the case plan necessary for the safe
34 return of the child have been made available to the parent with whom
35 reintegration is planned; or (3) compelling reasons are documented in the
36 case plan to support a finding that neither adoption nor appointment of a
37 permanent custodian are in the child's best interest. If reintegration is not
38 a viable alternative and either adoption or appointment of a permanent
39 custodian might be in the best interests of the child, the county or district
40 attorney or the county or district attorney's designee shall file a motion to
41 terminate parental rights or a motion to appoint a permanent custodian
42 within 30 days and the court shall set a hearing on such motion within 90
43 days of the filing of such motion.

1 (h) If the court enters an order terminating parental rights to a
2 child, or an agency has accepted a relinquishment pursuant to K.S.A. 59-
3 2124, and amendments thereto, the requirements for permanency
4 hearings shall continue until an adoption or appointment of a permanent
5 custodian has been accomplished *by order of the court*. If the court
6 determines that reasonable efforts or progress have not been made toward
7 finding an adoptive placement or appointment of a permanent custodian
8 or placement with a fit and willing relative, the court may rescind its prior
9 orders and make others regarding custody and adoption that are
10 appropriate under the circumstances. Reports of a proposed adoptive
11 placement need not contain the identity of the proposed adoptive parents.

12 (i) If permanency with one parent has been achieved without the
13 termination of the other parent's rights, the court may, prior to dismissing
14 the case, enter child custody orders, including residency and parenting
15 time that the court determines to be in the best interests of the child. The
16 court shall complete a parenting plan pursuant to K.S.A. 60-1625, and
17 amendments thereto.

18 (1) Before entering a custody order under this subsection, the court
19 shall inquire whether a custody order has been entered or is pending in a
20 civil custody case by a court of competent jurisdiction within the state of
21 Kansas.

22 (2) If a civil custody case has been filed or is pending, a certified
23 copy of the custody, residency and parenting time orders shall be filed in
24 the civil custody case. The court in the civil custody case may, after
25 consultation with the court in the child in need of care case, enter an order
26 declaring that the custody order in the child in need of care case shall
27 become the custody order in the civil custody case.

28 (3) A district court, on its own motion or upon the motion of any
29 party, may order the consolidation of the child in need of care case with
30 any open civil custody case involving the child and both of the child's
31 parents. Custody, residency and parenting time orders entered in
32 consolidated child in need of care and civil custody cases take precedence

1 over any previous orders affecting both parents and the child that were
2 entered in the civil custody case regarding the same or related issues.
3 Following entry of a custody order in a consolidated case, the court shall
4 dismiss the child in need of care case and, if necessary, return the civil
5 custody case to the original court having jurisdiction over it.

6 (4) If no civil custody case has been filed, the court may direct the
7 parties to file a civil custody case and to file the custody orders from the
8 child in need of care case in that case. Costs of the civil custody case may
9 be assessed to the parties.

10 (5) Nothing in this subsection shall operate to expand access to
11 information that is confidential under K.S.A. 38-2209, and amendments
12 thereto, and the confidentiality of such information shall be preserved in
13 all filings in a civil custody case.

14 (j) When permanency has been achieved to the satisfaction of the
15 court, the court shall enter an order closing the case.

16 Sec. 9. K.S.A. 2010 Supp. 38-2270 is hereby amended to read as
17 follows: 38-2270. (a) When parental rights have been terminated and it
18 appears that adoption is a viable alternative, the court shall enter one of
19 the following orders:

20 (1) An order granting custody of the child, for adoption proceedings,
21 to the secretary or a corporation organized under the laws of the state of
22 Kansas authorized to care for and surrender children for adoption as
23 provided in K.S.A. 38-112 et seq., and amendments thereto. The person,
24 secretary or corporation shall, *upon order of the court*, have authority to
25 place the child in a family home, and give consent for the legal adoption
26 of the child which shall be the only consent required to authorize the
27 entry of an order or decree of adoption.

28 (2) An order granting custody of the child to proposed adoptive
29 parents and consenting to the adoption of the child by the proposed
30 adoptive parents.

31 (b) In making an order under subsection (a), the court shall give
32 preference, to the extent that the court finds it is in the best interests of the
33 child, first to granting such custody for adoption to a relative of the child
34 and second to granting such custody to a person with whom the child has
35 close emotional ties. *If the court denies custody for adoption to a relative*
36 *of the child, it shall set forth its reasons for such denial in its order.*

37 (c) *Discharge upon adoption.* When an adoption decree has been
38 filed with the court in the child in need of care case, the secretary's
39 custody shall cease, the court's jurisdiction over the child shall cease and
40 the court shall enter an order to that effect.

41 Sec. 10. K.S.A. 75-3330 is hereby amended to read as follows: 75-
42 3330. The board is authorized to place any child committed to or received
43 at a state institution in a private children's home *upon order by the court*

1 *of proper jurisdiction.* The board may enter into contractual agreements
2 with any private children's home to provide adequate care, custody,
3 education, training and treatment for any child so placed and to pay the
4 costs of ~~said~~*such* care, custody, education, training and treatment if the
5 costs are not paid by the child's parents or guardian or if the child is not
6 eligible to receive assistance under K.S.A. 39-709, ~~or any~~*and*
7 amendments thereto. Any such contract shall be for a period of not to
8 exceed five (5) years but the same may be renewed upon its expiration.

9 Sec. 11. K.S.A. 75-3330 and K.S.A. 2010 Supp. 38-2242, 38-2243,
10 38-2252, 38-2255, 38-2255a, 38-2258, 38-2258a, 38-2259, 38-2263, 38-
11 2264 and 38-2270 are hereby repealed.

12 Sec. 12. This act shall take effect and be in force from and after its
13 publication in the statute book.

14