

## SENATE BILL No. 204

By Committee on Federal and State Affairs

2-11

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1 AN ACT concerning the revised Kansas code for care of children; relating  
2 to visitation; amending K.S.A. 2014 Supp. 38-2255 and repealing the  
3 existing section.

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

6 Section 1. K.S.A. 2014 Supp. 38-2255 is hereby amended to read as  
7 follows: 38-2255. (a) *Considerations*. Prior to entering an order of  
8 disposition, the court shall give consideration to:

- 9 (1) The child's physical, mental and emotional condition;  
10 (2) the child's need for assistance;  
11 (3) the manner in which the parent participated in the abuse, neglect  
12 or abandonment of the child;  
13 (4) any relevant information from the intake and assessment process;  
14 and  
15 (5) the evidence received at the dispositional hearing.

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

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

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

- 28 (1) (A) The child is likely to sustain harm if not immediately removed  
29 from the home;  
30 (B) allowing the child to remain in home is contrary to the welfare of  
31 the child; or  
32 (C) immediate placement of the child is in the best interest of the  
33 child; and  
34 (2) reasonable efforts have been made to maintain the family unit and  
35 prevent the unnecessary removal of the child from the child's home or that  
36 an emergency exists which threatens the safety to the child.

1 The court shall not enter an order removing a child from the custody of  
2 a parent pursuant to this section based solely on the finding that the parent  
3 is homeless.

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 an order awarding custody to: A relative of the child or to a person  
7 with whom the child has close emotional ties who shall not be required to  
8 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,  
9 and amendments thereto; any other suitable person; a shelter facility; a  
10 youth residential facility; a staff secure facility, notwithstanding any other  
11 provision of law, if the child has been subjected to human trafficking or  
12 aggravated human trafficking, as defined by K.S.A. 2014 Supp. 21-5426,  
13 and amendments thereto, or commercial sexual exploitation of a child, as  
14 defined by K.S.A. 2014 Supp. 21-6422, and amendments thereto, or the  
15 child committed an act which, if committed by an adult, would constitute a  
16 violation of K.S.A. 2014 Supp. 21-6419, and amendments thereto; or, if  
17 the child is 15 years of age or younger, or 16 or 17 years of age if the child  
18 has no identifiable parental or family resources or shows signs of physical,  
19 mental, emotional or sexual abuse, to the secretary. Custody awarded  
20 under this subsection shall continue until further order of the court.

21 (1) When custody is awarded to the secretary, the secretary shall  
22 consider any placement recommendation by the court and notify the court  
23 of the placement or proposed placement of the child within 10 days of the  
24 order awarding custody. After providing the parties or interested parties  
25 notice and opportunity to be heard, the court may 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 shall then make an alternative placement.

33 (2) The custodian designated under this subsection shall notify the  
34 court in writing at least 10 days prior to any planned placement with a  
35 parent. The written notice shall state the basis for the custodian's belief that  
36 placement with a parent is no longer contrary to the welfare or best interest  
37 of the child. Upon reviewing the notice, the court may allow the custodian  
38 to proceed with the planned placement or may set the date for a hearing to  
39 determine if the child shall be allowed to return home. If the court sets a  
40 hearing on the matter, the custodian shall not return the child home without  
41 written consent of the court.

42 (3) The court may grant any person reasonable rights to visit the child  
43 upon motion of the person and a finding that the visitation rights would be

1 in the best interests of the child. *A person granted visitation rights shall be*  
2 *entitled to the total amount of time granted for visitation. If a person is*  
3 *late for a scheduled visitation, the time missed due to such lateness shall*  
4 *not be deducted from the total amount of time granted for visitation, and*  
5 *reasonable accommodations shall be made to extend such scheduled*  
6 *visitation or to add such time to another scheduled visitation.*

7 (4) The court may enter an order restraining any alleged perpetrator  
8 of physical, mental or emotional abuse or sexual abuse of the child from  
9 residing in the child's home; visiting, contacting, harassing or intimidating  
10 the child, other family member or witness; or attempting to visit, contact,  
11 harass or intimidate the child, other family member or witness. Such  
12 restraining order shall be served by personal service pursuant to ~~subsection~~  
13 ~~(a)~~ of K.S.A. 2014 Supp. 38-2237(a), and amendments thereto, on any  
14 alleged perpetrator to whom the order is directed.

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

18 (e) *Further determinations regarding a child removed from the home.*  
19 If custody has been awarded under subsection (d) to a person other than a  
20 parent, a permanency plan shall be provided or prepared pursuant to  
21 K.S.A. 2014 Supp. 38-2264, and amendments thereto. If a permanency  
22 plan is provided at the dispositional hearing, the court may determine  
23 whether reintegration is a viable alternative or, if reintegration is not a  
24 viable alternative, whether the child should be placed for adoption or a  
25 permanent custodian appointed. In determining whether reintegration is a  
26 viable alternative, the court shall consider:

27 (1) Whether a parent has been found by a court to have committed  
28 one of the following crimes or to have violated the law of another state  
29 prohibiting such crimes or to have aided and abetted, attempted, conspired  
30 or solicited the commission of one of these crimes: (A) Murder in the first  
31 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402,  
32 and amendments thereto; (B) murder in the second degree, K.S.A. 21-  
33 3402, prior to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments  
34 thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A.  
35 2014 Supp. 21-5401, and amendments thereto; (D) voluntary  
36 manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014 Supp.  
37 21-5404, and amendments thereto; or (E) a felony battery that resulted in  
38 bodily injury;

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

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

- 1 (4) whether the child has been in extended out of home placement;  
2 (5) whether the parents have failed to work diligently toward  
3 reintegration;
- 4 (6) whether the secretary has provided the family with services  
5 necessary for the safe return of the child to the home; and  
6 (7) whether it is reasonable to expect reintegration to occur within a  
7 time frame consistent with the child's developmental needs.
- 8 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
9 determines that reintegration is not a viable alternative, proceedings to  
10 terminate parental rights and permit placement of the child for adoption or  
11 appointment of a permanent custodian shall be initiated unless the court  
12 finds that compelling reasons have been documented in the case plan why  
13 adoption or appointment of a permanent custodian would not be in the best  
14 interests of the child. If compelling reasons have not been documented, the  
15 county or district attorney shall file a motion within 30 days to terminate  
16 parental rights or a motion to appoint a permanent custodian within 30  
17 days and the court shall hold a hearing on the motion within 90 days of its  
18 filing. No hearing is required when the parents voluntarily relinquish  
19 parental rights or consent to the appointment of a permanent custodian.
- 20 (g) *Additional Orders.* In addition to or in lieu of any other order  
21 authorized by this section:
- 22 (1) The court may order the child and the parents of any child who  
23 has been adjudicated a child in need of care to attend counseling sessions  
24 as the court directs. The expense of the counseling may be assessed as an  
25 expense in the case. No mental health provider shall charge a greater fee  
26 for court-ordered counseling than the provider would have charged to the  
27 person receiving counseling if the person had requested counseling on the  
28 person's own initiative.
- 29 (2) If the court has reason to believe that a child is before the court  
30 due, in whole or in part, to the use or misuse of alcohol or a violation of  
31 K.S.A. 2014 Supp. 21-5701 through 21-5717, and amendments thereto, by  
32 the child, a parent of the child, or another person responsible for the care  
33 of the child, the court may order the child, parent of the child or other  
34 person responsible for the care of the child to submit to and complete an  
35 alcohol and drug evaluation by a qualified person or agency and comply  
36 with any recommendations. If the evaluation is performed by a  
37 community-based alcohol and drug safety program certified pursuant to  
38 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or  
39 other person responsible for the care of the child shall pay a fee not to  
40 exceed the fee established by that statute. If the court finds that the child  
41 and those legally liable for the child's support are indigent, the fee may be  
42 waived. In no event shall the fee be assessed against the secretary.
- 43 (3) If child support has been requested and the parent or parents have

1 a duty to support the child, the court may order one or both parents to pay  
2 child support and, when custody is awarded to the secretary, the court shall  
3 order one or both parents to pay child support. The court shall determine,  
4 for each parent separately, whether the parent is already subject to an order  
5 to pay support for the child. If the parent is not presently ordered to pay  
6 support for any child who is subject to the jurisdiction of the court and the  
7 court has personal jurisdiction over the parent, the court shall order the  
8 parent to pay child support in an amount determined under K.S.A. 2014  
9 Supp. 38-2277, and amendments thereto. Except for good cause shown,  
10 the court shall issue an immediate income withholding order pursuant to  
11 K.S.A. 2014 Supp. 23-3101 et seq., and amendments thereto, for each  
12 parent ordered to pay support under this subsection, regardless of whether  
13 a payor has been identified for the parent. A parent ordered to pay child  
14 support under this subsection shall be notified, at the hearing or otherwise,  
15 that the child support order may be registered pursuant to K.S.A. 2014  
16 Supp. 38-2279, and amendments thereto. The parent shall also be informed  
17 that, after registration, the income withholding order may be served on the  
18 parent's employer without further notice to the parent and the child support  
19 order may be enforced by any method allowed by law. Failure to provide  
20 this notice shall not affect the validity of the child support order.

21 Sec. 2. K.S.A. 2014 Supp. 38-2255 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its  
23 publication in the statute book.