

As Amended by House Committee

Session of 2017

SENATE BILL No. 124

By Committee on Judiciary

2-1

1 AN ACT concerning the **care of children; relating to the** Kansas family
2 law code; ~~relating to~~ child custody, residency and parenting time;
3 evidence of domestic abuse; **relating to the revised Kansas code for**
4 **the care of children; rules of evidence; admissibility of certain test**
5 **results;** amending K.S.A. 2016 Supp. 23-3201 ~~and~~, 23-3203 and **38-**
6 **2249** and repealing the existing sections.

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

9 Section 1. K.S.A. 2016 Supp. 23-3201 is hereby amended to read as
10 follows: 23-3201. The court shall determine *legal* custody ~~or~~, residency
11 *and parenting time* of a child in accordance with the best interests of the
12 child.

13 Sec. 2. K.S.A. 2016 Supp. 23-3203 is hereby amended to read as
14 follows: 23-3203. (a) In determining the issue of legal custody, residency
15 and parenting time of a child, the court shall consider all relevant factors,
16 including, but not limited to:

17 (1) Each parent's role and involvement with the minor child before
18 and after separation;

19 (2) the desires of the child's parents as to custody or residency;

20 (3) the desires of a child of sufficient age and maturity as to the
21 child's custody or residency;

22 (4) the age of the child;

23 (5) the emotional and physical needs of the child;

24 (6) the interaction and interrelationship of the child with parents,
25 siblings and any other person who may significantly affect the child's best
26 interests;

27 (7) the child's adjustment to the child's home, school and community;

28 (8) the willingness and ability of each parent to respect and appreciate
29 the bond between the child and the other parent and to allow for a
30 continuing relationship between the child and the other parent;

31 (9) evidence of ~~spousal abuse, either emotional or physical~~ *domestic*
32 *abuse, including, but not limited to:*

33 (A) *A pattern or history of physically or emotionally abusive*
34 *behavior or threat thereof used by one person to gain or maintain*
35 *domination and control over an intimate partner or household member; or*

36 (B) *an act of domestic violence, stalking or sexual assault;*

1 (10) the ability of the parties to communicate, cooperate and manage
2 parental duties;

3 (11) the school activity schedule of the child;

4 (12) the work schedule of the parties;

5 (13) the location of the parties' residences and places of employment;

6 (14) the location of the child's school;

7 (15) whether a parent is subject to the registration requirements of the
8 Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments
9 thereto, or any similar act in any other state, or under military or federal
10 law;

11 (16) whether a parent has been convicted of abuse of a child, K.S.A.
12 21-3609, prior to its repeal, or K.S.A. 2016 Supp. 21-5602, and
13 amendments thereto;

14 (17) whether a parent is residing with an individual who is subject to
15 registration requirements of the Kansas offender registration act, K.S.A.
16 22-4901 et seq., and amendments thereto, or any similar act in any other
17 state, or under military or federal law; and

18 (18) whether a parent is residing with an individual who has been
19 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.
20 2016 Supp. 21-5602, and amendments thereto.

21 (b) To aid in determining the issue of legal custody, residency and
22 parenting time of a child, the court may order a parent to undergo a
23 domestic violence offender assessment conducted by a certified batterer
24 intervention program and may order such parent to follow all
25 recommendations made by such program.

26 **Sec. 3. K.S.A. 2016 Supp. 38-2249 is hereby amended to read as**
27 **follows: 38-2249. (a) In all proceedings under this code, the rules of**
28 **evidence of the code of civil procedure shall apply, except that no**
29 **evidence relating to the condition of a child shall be excluded solely on**
30 **the ground that the matter is or may be the subject of a physician-**
31 **patient privilege, psychologist-client privilege or social worker-client**
32 **privilege.**

33 **(b) (1) The judge presiding at all hearings under this code shall**
34 **not consider or rely upon any report not properly admitted according**
35 **to the rules of evidence, except as provided by K.S.A. 2016 Supp. 38-**
36 **2219, and amendments thereto.**

37 *(2) In all proceedings under this code, a report concerning the results*
38 *and analysis of a court-ordered test of a person's blood, breath, urine or*
39 *other bodily substance to determine the presence of alcohol or drugs shall*
40 *be admissible in evidence if the report is prepared and attested to by the*
41 *person conducting the test or an authorized employee of the facility that*
42 *conducted the test. Such person shall prepare a certificate that includes an*
43 *attestation as to the result and analysis of the test and sign the certificate*

1 *under oath. Nothing in this section shall prevent a party from calling such*
2 *person as a witness.*

3 **(c) In any proceeding in which a child less than 13 years of age is**
4 **alleged to have been physically, mentally or emotionally abused or**
5 **neglected or sexually abused, a recording of an oral statement of the**
6 **child, or of any witness less than 13 years of age, made before the**
7 **proceeding began, is admissible in evidence if:**

8 **(1) The court determines that the time, content and**
9 **circumstances of the statement provide sufficient indicia of reliability;**

10 **(2) no attorney for any party or interested party is present when**
11 **the statement is made;**

12 **(3) the recording is both visual and aural and is recorded on film,**
13 **videotape or by other electronic means;**

14 **(4) the recording equipment is capable of making an accurate**
15 **recording, the operator of the equipment is competent and the**
16 **recording is accurate and has not been altered;**

17 **(5) the statement is not made in response to questioning**
18 **calculated to lead the child to make a particular statement or is clearly**
19 **shown to be the child's statement and not made solely as a result of a**
20 **leading or suggestive question;**

21 **(6) every voice on the recording is identified;**

22 **(7) the person conducting the interview of the child in the**
23 **proceeding is present at the proceeding and is available to testify or be**
24 **cross-examined by any party or interested party; and**

25 **(8) each party or interested party to the proceeding is afforded an**
26 **opportunity to view the recording before it is offered into evidence.**

27 **(d) On motion of any party to a proceeding pursuant to the code**
28 **in which a child less than 13 years of age is alleged to have been**
29 **physically, mentally or emotionally abused or neglected or sexually**
30 **abused, the court may order that the testimony of the child, or of any**
31 **witness less than 13 years of age, be taken:**

32 **(1) In a room other than the courtroom and be televised by**
33 **closed-circuit equipment in the courtroom to be viewed by the court**
34 **and the parties and interested parties to the proceeding; or**

35 **(2) outside the courtroom and be recorded for showing in the**
36 **courtroom before the court and the parties and interested parties to**
37 **the proceeding if:**

38 **(A) The recording is both visual and aural and is recorded on**
39 **film, videotape or by other electronic means;**

40 **(B) the recording equipment is capable of making an accurate**
41 **recording, the operator of the equipment is competent and the**
42 **recording is accurate and has not been altered;**

43 **(C) every voice on the recording is identified; and**

1 (D) each party and interested party to the proceeding is afforded
2 an opportunity to view the recording before it is shown in the
3 courtroom.

4 (e) At the taking of testimony under subsection (d):

5 (1) Only an attorney for each party, interested party, the
6 guardian ad litem for the child or other person whose presence would
7 contribute to the welfare and well-being of the child and persons
8 necessary to operate the recording or closed-circuit equipment may be
9 present in the room with the child during the child's testimony;

10 (2) only the attorneys for the parties may question the child; and

11 (3) the persons operating the recording or closed-circuit
12 equipment shall be confined to an adjacent room or behind a screen or
13 mirror that permits such person to see and hear the child during the
14 child's testimony, but does not permit the child to see or hear such
15 person.

16 (f) If the testimony of a child is taken as provided by subsection
17 (d), the child shall not be compelled to testify in court during the
18 proceeding.

19 (g) (1) Any objection to a recording under subsection (d)(2) that
20 such proceeding is inadmissible must be made by written motion filed
21 with the court at least seven days before the commencement of the
22 adjudicatory hearing. An objection under this subsection shall specify
23 the portion of the recording which is objectionable and the reasons for
24 the objection. Failure to file an objection within the time provided by
25 this subsection shall constitute waiver of the right to object to the
26 admissibility of the recording unless the court, in its discretion,
27 determines otherwise.

28 (2) The provisions of this subsection shall not apply to any
29 objection to admissibility for the reason that the recording has been
30 materially altered.

31 ~~Sec. 3.~~ 4. K.S.A. 2016 Supp. 23-3201 ~~and~~, 23-3203 and 38-2249 are
32 hereby repealed.

33 ~~Sec. 4.~~ 5. This act shall take effect and be in force from and after its
34 publication in the statute book.