

HOUSE BILL No. 2003

By Representative Stone

12-5

AN ACT concerning children; relating to children in need of care; amending K.S.A. 38-1563 and repealing the existing section.

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

Section 1. K.S.A. 38-1563 is hereby amended to read as follows: 38-1563. (a) After consideration of any evidence offered relating to disposition, the court may retain jurisdiction and place the child in the custody of the child's parent subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including supervision of the child and the parent by a court services officer, or may order the child and the parent to participate in programs operated by the secretary or another appropriate individual or agency. The terms and conditions may require any special treatment or care which the child needs for the child's physical, mental or emotional health.

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

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

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

- (1) A relative of the child or a person with whom the child has close emotional ties;
- (2) any other suitable person;

1 (3) a shelter facility; or

2 (4) the secretary.

3 If the child is adjudged to be a child in need of care, the court shall
4 not place the child in the custody of the secretary if the court has received
5 from the secretary, written documentation of the services and/or com-
6 munity services plan offered or delivered to prevent the need for such
7 custody unless the court finds that the services documented by the sec-
8 retary are insufficient to protect the safety of the child and that being in
9 the custody of the parent with such services in place is contrary to the
10 welfare or that placement is in the best interests of the child. The court
11 shall have the authority to require any person or entity agreeing to partic-
12 ipate in the plan to perform as set out in the plan. The secretary shall
13 present to the court in writing the specific actions taken to maintain the
14 family unit and prevent the unnecessary removal of the child from the
15 child's home.

16 In making such a custody order, the court shall give preference, to the
17 extent that the court finds it is in the best interests of the child, first to
18 granting custody to a relative of the child and second to granting custody
19 of the child to a person with whom the child has close emotional ties. If
20 the court has awarded legal custody based on the finding specified by this
21 subsection, the legal custodian shall not return the child to the home of
22 that parent without the written consent of the court.

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

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

26 (2) The secretary shall notify the court in writing of any placement
27 of the child or, within 10 days of the order awarding the custody of the
28 child to the secretary, any proposed placement of the child, whichever
29 occurs first.

30 (3) The court may determine if such placement is contrary to the
31 welfare or in the best interests of the child, and if the court determines
32 that such placement is not in the best interests of the child, the court
33 shall notify the secretary who shall then make an alternative placement
34 subject to the procedures established in this paragraph. In determining
35 if such placement is in the best interests of the child, the court, after
36 providing the parties with an opportunity to be heard, shall consider the
37 health and safety needs of the child and the resources available to meet
38 the needs of children in the custody of the secretary.

39 (4) When the secretary provides the court with a plan to provide
40 services to a child or family which the court finds is in place and which
41 will assure the safety of the child, the court shall approve the return of
42 the child to the child's home. The court shall have the authority to require
43 any person or entity agreeing to participate in the plan to perform as set

1 out in the plan.

2 (f) If custody of a child is awarded under this section to a person
3 other than the child's parent, the court may grant any individual reason-
4 able rights to visit the child upon motion of the individual and a finding
5 that the visitation rights would be in the best interests of the child.

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

12 (h) The court shall not enter an order removing a child from the
13 custody of a parent pursuant to this section unless the court first finds
14 from evidence presented by the petitioner that reasonable efforts have
15 been made to maintain the family unit and prevent the unnecessary re-
16 moval of the child from the child's home or that reasonable efforts are
17 not necessary because reintegration is not a viable alternative; or that an
18 emergency exists which threatens the safety of the child and that allowing
19 the child to remain in the home is contrary to the welfare of the child or
20 that placement would be in the best interest of the child. If the child is
21 placed in the custody of the secretary, the court shall provide the secretary
22 with a copy of any orders entered for the purpose of documenting these
23 orders within 10 days of making the order. Reintegration may not be a
24 viable alternative when the: (1) Parent has been found by a court to have
25 committed murder in the first degree, K.S.A. 21-3401, and amendments
26 thereto, murder in the second degree, K.S.A. 21-3402, and amendments
27 thereto, capital murder, K.S.A. 21-3439, and amendments thereto, vol-
28 untary manslaughter, K.S.A. 21-3403, and amendments thereto, or vio-
29 lated a law of another state which prohibits such murder or manslaughter
30 of a child; (2) parent aided or abetted, attempted, conspired or solicited
31 to commit such murder or voluntary manslaughter of a child as provided
32 in subsection (h)(1); (3) parent committed a felony battery that resulted
33 in bodily injury to the child or another child; (4) parent has subjected the
34 child or another child to aggravated circumstances as defined in K.S.A.
35 38-1502, and amendments thereto; (5) parental rights of the parent to
36 another child have been terminated involuntarily ~~or~~; (6) the child has been
37 in extended out of home placement as defined in K.S.A. 38-1502, and
38 amendments thereto; (7) *parent abused or neglected the child and: (A)*
39 *Reasonable efforts to reestablish the family unit have failed; (B) the par-*
40 *ents have failed or refuse to modify their circumstances to meet the needs*
41 *of the child; or (C) the evidence shows that it is not in the best interest of*
42 *the child to remain with or be returned to the parent. Such findings shall*
43 *be included in any order entered by the court.*

1 (i) In addition to or in lieu of any other order authorized by this
2 section, if a child is adjudged to be a child in need of care by reason of a
3 violation of the uniform controlled substances act {K.S.A. 65-4101 *et seq.*,
4 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
5 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
6 order the child to submit to and complete an alcohol and drug evaluation
7 by a community-based alcohol and drug safety action program certified
8 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
9 to exceed the fee established by that statute for such evaluation. If the
10 court finds that the child and those legally liable for the child's support
11 are indigent, the fee may be waived. In no event shall the fee be assessed
12 against the secretary or the department of social and rehabilitation
13 services.

14 (j) In addition to any other order authorized by this section, if child
15 support has been requested and the parent or parents have a duty to
16 support the child, the court may order one or both parents to pay child
17 support and, when custody is awarded to the secretary, the court shall
18 order one or both parents to pay child support. The court shall determine,
19 for each parent separately, whether the parent is already subject to an
20 order to pay support for the child. If the parent is not presently ordered
21 to pay support for any child who is a ward of the court and the court has
22 personal jurisdiction over the parent, the court shall order the parent to
23 pay child support in an amount determined under K.S.A. 38-1595, and
24 amendments thereto. Except for good cause shown, the court shall issue
25 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
26 *seq.*, and amendments thereto, for each parent ordered to pay support
27 under this subsection, regardless of whether a payor has been identified
28 for the parent. A parent ordered to pay child support under this subsec-
29 tion shall be notified, at the hearing or otherwise, that the child support
30 order may be registered pursuant to K.S.A. 38-1597, and amendments
31 thereto. The parent shall also be informed that, after registration, the
32 income withholding order may be served on the parent's employer with-
33 out further notice to the parent and the child support order may be en-
34 forced by any method allowed by law. Failure to provide this notice shall
35 not affect the validity of the child support order.

36 Sec. 2. K.S.A. 38-1563 is hereby repealed.

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

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