

## SENATE BILL No. 16

By Joint Committee on Corrections and Juvenile Justice Oversight

1-8

---

AN ACT concerning the Kansas code for care of children; relating to temporary custody hearing; amending K.S.A. 38-1543 and repealing the existing section.

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

Section 1. K.S.A. 38-1543 is hereby amended to read as follows: 38-1543. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

(b) A hearing pursuant to this section shall be held within ~~72~~ 48 hours, excluding Saturdays, Sundays and legal holidays, following a child having been taken into protective custody.

(c) Whenever it is determined that a temporary custody hearing is required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be in substantially the following form:

(Name of Court)

(Caption of Case)

### NOTICE OF TEMPORARY CUSTODY HEARING

TO:

(Names)

(Relationship)

(Addresses)

On \_\_\_\_\_, \_\_\_\_\_, (year), at \_\_\_\_ o'clock \_\_\_\_m.

(day) (date)

the court will conduct a hearing at \_\_\_\_\_ to determine if the above named child or children should be in the temporary custody of some person or agency other than the parent or other person having legal custody prior to the hearing on the petition filed in the above captioned case. The court may order one or both parents to pay child support.

\_\_\_\_\_, an attorney, has been appointed as guardian *ad litem* for the child or children. Each parent or other legal custodian has the right to appear and be heard person-

1 ally, either with or without an attorney. An attorney will be appointed for a parent who can  
2 show that the parent is not financially able to hire one.

3 Date \_\_\_\_\_, (year) Clerk of the District Court  
4 by \_\_\_\_\_  
5 (Seal)

6 REPORT OF SERVICE

7 I certify that I have delivered a true copy of the above notice to the persons above named  
8 in the manner and at the times indicated below:

9 Name	10 Location of Service (other than above)	11 Manner of Service	12 Date	13 Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

14 Date Returned \_\_\_\_\_, \_\_\_\_ (year)  
15 \_\_\_\_\_  
16 Signature)  
17 \_\_\_\_\_  
18 (Title)

19  
20 (d) Notice of the temporary custody hearing shall be given at least  
21 24 hours prior to the hearing. The court may continue the hearing to  
22 afford the 24 hours prior notice or, with the consent of the party, proceed  
23 with the hearing at the designated time. If an order of temporary custody  
24 is entered and the parent or other person having custody of the child has  
25 not been notified of the hearing, did not appear or waive appearance and  
26 requests a rehearing, the court shall rehear the matter without unnec-  
27 essary delay.

28 (e) Oral notice may be used for giving notice of a temporary custody  
29 hearing where there is insufficient time to give written notice. Oral notice  
30 is completed upon filing a certificate of oral notice in substantially the  
31 following form:

32 (Name of Court)

33 (Caption of Case)

34 CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

35 I gave oral notice that the court will conduct a hearing at \_\_\_ o'clock \_\_\_m. on \_\_\_\_\_,  
36 \_\_\_\_ (year), to the persons listed, in the manner and at the times indicated below:

37 Name	38 Relationship	Date	Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

42 I advised each of the above persons that:

43 (1) The hearing is to determine if the above child or children should be in the temporary

- 1 custody of a person or agency other than a parent;
- 2 (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or
- 3 children named above;
- 4 (3) each parent or legal custodian has the right to appear and be heard personally either
- 5 with or without an attorney;
- 6 (4) an attorney will be appointed for a parent who can show that the parent is not
- 7 financially able to hire an attorney; and
- 8 (5) the court may order one or both parents to pay child support.

9 \_\_\_\_\_  
 10 (Signature)

11 \_\_\_\_\_  
 12 (Name Printed)

13 \_\_\_\_\_  
 14 (Title)

15 (f) The court may enter an order of temporary custody after deter-  
 16 mining that: (1) The child is dangerous to self or to others; (2) the child  
 17 is not likely to be available within the jurisdiction of the court for future  
 18 proceedings; or (3) the health or welfare of the child may be endangered  
 19 without further care.

20 (g) Whenever the court determines the necessity for an order of tem-  
 21 porary custody the court may place the child in the temporary custody  
 22 of: (1) A parent or other person having custody of the child and may enter  
 23 a restraining order pursuant to subsection (h); (2) a person, other than  
 24 the parent or other person having custody, who shall not be required to  
 25 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-  
 26 tated; (3) a youth residential facility; or (4) the secretary if the child is  
 27 alleged to be a child in need of care, the court may award custody to the  
 28 secretary. However, if the secretary presents the court with a plan to  
 29 provide services to a child or family which the court finds will assure the  
 30 safety of the child, the court may only place the child in the temporary  
 31 custody of the secretary until the court finds the services are in place.  
 32 The court shall have the authority to require any person or entity agreeing  
 33 to participate in the plan to perform as set out in the plan. When the  
 34 child is placed in the temporary custody of the secretary, the secretary  
 35 shall have the discretionary authority to place the child with a parent or  
 36 to make other suitable placement for the child. When circumstances re-  
 37 quire, a child may be placed in a juvenile detention facility or other secure  
 38 facility, but the total amount of time that the child may be held in such  
 39 facility under this section and K.S.A. 38-1542 and amendments thereto  
 40 shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-  
 41 days. The order of temporary custody shall remain in effect until modified  
 42 or rescinded by the court or a disposition order is entered but not ex-  
 43 ceeding 60 days, unless good cause is shown and stated on the record.

1 (h) If the court issues an order of temporary custody, the court may  
2 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; or attempting to  
5 visit, contact, harass or intimidate the child.

6 (i) The court shall not enter an order removing a child from the cus-  
7 tody of a parent pursuant to this section unless the court first finds from  
8 evidence presented by the petitioner that reasonable efforts have been  
9 made to maintain the family unit and prevent the unnecessary removal  
10 of the child from the child's home or that an emergency exists which  
11 threatens the safety of the child and that remaining in the home is con-  
12 trary to the welfare of the child or that placement is in the best interest  
13 of the child. Such findings shall be included in any order entered by the  
14 court. If the child is placed in the custody of the secretary, the court shall  
15 provide the secretary with a written copy of any orders entered for the  
16 purpose of documenting these orders upon making the order.

17 Sec. 2. K.S.A. 38-1543 is hereby repealed.

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

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43