

HOUSE BILL No. 2943

By Representative Landwehr

2-13

AN ACT concerning children in need of care; amending K.S.A. 38-1513, 38-1514, 38-1521, 38-1523a, 38-1525, 38-1526, 38-1528, 38-1541, 38-1542, 38-1543, 38-1544, 38-1557, 38-1558 and 38-1563 and K.S.A. 2001 Supp. 38-1502 and 38-1522 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been ~~physically, mentally or emotionally abused or neglected or sexually~~ abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-4204a and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court

1 order, if the absence is without the consent of the person with whom the
2 child is placed or, if the child is placed in a facility, without the consent
3 of the person in charge of such facility or such person's designee;

4 (11) has been residing in the same residence with a sibling or another
5 person under 18 years of age, who has been ~~physically, mentally or emo-~~
6 ~~tionally~~ abused or neglected, or sexually abused; or

7 (12) while less than 10 years of age commits the offense defined in
8 K.S.A. 21-4204a and amendments thereto.

9 ~~(b) "Physical, mental or emotional abuse" means the infliction of~~
10 ~~physical, mental or emotional injury or the causing of a deterioration of~~
11 ~~a child and may include, but shall not be limited to, maltreatment or~~
12 ~~exploiting a child to the extent that the child's health or emotional well-~~
13 ~~being is endangered. "Abuse" or "abused" includes the following acts or~~
14 ~~omissions by a person:~~

15 (1) *Mental or emotional injury to a child that results in an observable*
16 *and material impairment in the child's growth, development or psycho-*
17 *logical functioning as observed by a physician or psychiatrist;*

18 (2) *causing or permitting the child to be in a situation in which the*
19 *child sustains a mental or emotional injury that results in an observable*
20 *and material impairment in the child's growth, development or psycho-*
21 *logical functioning as observed by a physician or psychiatrist;*

22 (3) *physical injury that results in substantial harm to the child, or the*
23 *genuine threat of substantial harm from physical injury to the child, in-*
24 *cluding an injury that is a variance with the history or explanation given*
25 *and excluding an accident or reasonable discipline by a parent or guard-*
26 *ian that does not expose the child to a substantial risk of harm;*

27 (4) *failure to make a reasonable effort to prevent an action by another*
28 *person that results in physical injury that results in substantial harm to*
29 *the child;*

30 (5) *sexual abuse.*

31 (c) "Sexual abuse" means any act committed with a child which is
32 described in article 35, chapter 21 of the Kansas Statutes Annotated and
33 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
34 thereto, regardless of the age of the child.

35 (d) "Parent," when used in relation to a child or children, includes a
36 guardian, conservator and every person who is by law liable to maintain,
37 care for or support the child.

38 (e) "Interested party" means the state, the petitioner, the child, any
39 parent, any grandparent and any person found to be an interested party
40 pursuant to K.S.A. 38-1541 and amendments thereto.

41 (f) "Law enforcement officer" means any person who by virtue of
42 office or public employment is vested by law with a duty to maintain
43 public order or to make arrests for crimes, whether that duty extends to

1 all crimes or is limited to specific crimes.

2 (g) “Youth residential facility” means any home, foster home or struc-
3 ture which provides 24-hour-a-day care for children and which is licensed
4 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

5 (h) “Shelter facility” means any public or private facility or home
6 other than a juvenile detention facility that may be used in accordance
7 with this code for the purpose of providing either temporary placement
8 for the care of children in need of care prior to the issuance of a dispo-
9 sitional order or longer term care under a dispositional order.

10 (i) “Juvenile detention facility” means any secure public or private
11 facility used for the lawful custody of accused or adjudicated juvenile
12 offenders which must not be a jail.

13 (j) “Adult correction facility” means any public or private facility, se-
14 cure or nonsecure, which is used for the lawful custody of accused or
15 convicted adult criminal offenders.

16 (k) “Secure facility” means a facility which is operated or structured
17 so as to ensure that all entrances and exits from the facility are under the
18 exclusive control of the staff of the facility, whether or not the person
19 being detained has freedom of movement within the perimeters of the
20 facility, or which relies on locked rooms and buildings, fences or physical
21 restraint in order to control behavior of its residents. No secure facility
22 shall be in a city or county jail.

23 (l) “Ward of the court” means a child over whom the court has ac-
24 quired jurisdiction by the filing of a petition pursuant to this code and
25 who continues subject to that jurisdiction until the petition is dismissed
26 or the child is discharged as provided in K.S.A. 38-1503 and amendments
27 thereto.

28 (m) “Custody,” whether temporary, protective or legal, means the
29 status created by court order or statute which vests in a custodian,
30 whether an individual or an agency, the right to physical possession of
31 the child and the right to determine placement of the child, subject to
32 restrictions placed by the court.

33 (n) “Placement” means the designation by the individual or agency
34 having custody of where and with whom the child will live.

35 (o) “Secretary” means the secretary of social and rehabilitation
36 services.

37 (p) “Relative” means a person related by blood, marriage or adoption
38 but, when referring to a relative of a child’s parent, does not include the
39 child’s other parent.

40 (q) “Court-appointed special advocate” means a responsible adult
41 other than an attorney guardian *ad litem* who is appointed by the court
42 to represent the best interests of a child, as provided in K.S.A. 38-1505a
43 and amendments thereto, in a proceeding pursuant to this code.

1 (r) “Multidisciplinary team” means a group of persons, appointed by
2 the court or by the state department of social and rehabilitation services
3 under K.S.A. 38-1523a and amendments thereto, which has knowledge
4 of the circumstances of a child in need of care. A multidisciplinary team
5 may serve as a community services team.

6 (s) “Jail” means:

7 (1) An adult jail or lockup; or

8 (2) a facility in the same building or on the same grounds as an adult
9 jail or lockup, unless the facility meets all applicable standards and licen-
10 sure requirements under law and there is (A) total separation of the ju-
11 venile and adult facility spatial areas such that there could be no haphaz-
12 ard or accidental contact between juvenile and adult residents in the
13 respective facilities; (B) total separation in all juvenile and adult program
14 activities within the facilities, including recreation, education, counseling,
15 health care, dining, sleeping, and general living activities; and (C) separate
16 juvenile and adult staff, including management, security staff and direct
17 care staff such as recreational, educational and counseling.

18 (t) “Kinship care” means the placement of a child in the home of the
19 child’s relative or in the home of another adult with whom the child or
20 the child’s parent already has a close emotional attachment.

21 (u) “Juvenile intake and assessment worker” means a responsible
22 adult authorized to perform intake and assessment services as part of the
23 intake and assessment system established pursuant to K.S.A. 75-7023, and
24 amendments thereto.

25 (v) “Abandon” means to forsake, desert or cease providing care for
26 the child without making appropriate provisions for substitute care.

27 (w) “Permanent guardianship” means a judicially created relationship
28 between child and caretaker which is intended to be permanent and self-
29 sustaining without ongoing state oversight or intervention by the secre-
30 tary. The permanent guardian stands in loco parentis and exercises all the
31 rights and responsibilities of a parent. A permanent guardian may be
32 appointed after termination of parental rights or without termination of
33 parental rights, if the parent consents and agrees to the appointment of
34 a permanent guardian. Upon appointment of a permanent guardian, the
35 child shall be discharged from the custody of the secretary.

36 (x) “Aggravated circumstances” means the abandonment, torture,
37 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

38 (y) “Permanency hearing” means a notice and opportunity to be
39 heard is provided to interested parties, foster parents, preadoptive parents
40 or relatives providing care for the child. The court, after consideration of
41 the evidence, shall determine whether progress toward the case plan goal
42 is adequate or reintegration is a viable alternative, or if the case should
43 be referred to the county or district attorney for filing of a petition to

1 terminate parental rights or to appoint a permanent guardian.

2 (z) “Extended out of home placement” means a child has been in the
3 custody of the secretary and placed with neither parent for 15 of the most
4 recent 22 months beginning 60 days after the date at which a child in the
5 custody of the secretary was removed from the home.

6 (aa) “Educational institution” means all schools at the elementary and
7 secondary levels.

8 (bb) “Educator” means any administrator, teacher or other profes-
9 sional or paraprofessional employee of an educational institution who has
10 exposure to a pupil specified in subsection (a) of K.S.A. 2001 Supp. 72-
11 89b03 and amendments thereto.

12 (cc) “Neglect” means acts or omissions by a parent, guardian or per-
13 son responsible for the care of a child resulting in harm to a child or
14 presenting a ~~likelihood of~~ *substantial risk of substantial* harm and the acts
15 or omissions are not due solely to the lack of financial means of the child’s
16 parents or other custodian. Neglect may include but shall not be limited
17 to:

18 (1) Failure to provide the child with food, clothing or shelter neces-
19 sary to sustain the life or health of the child;

20 (2) failure to provide adequate supervision of a child or to remove a
21 child from a situation which requires judgment or actions beyond the
22 child’s level of maturity, physical condition or mental abilities and that
23 results in bodily injury or a ~~likelihood of~~ *substantial risk of substantial*
24 harm to the child; or

25 (3) failure to use resources available to treat a diagnosed medical
26 condition if such treatment will make a child substantially more com-
27 fortable, reduce pain and suffering, correct or substantially diminish a
28 crippling condition from worsening. A parent legitimately practicing re-
29 ligious beliefs who does not provide specified medical treatment for a
30 child because of religious beliefs shall not for that reason be considered
31 a negligent parent; however, this exception shall not preclude a court from
32 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
33 amendments thereto.

34 (dd) “Community services team” means a group of persons, ap-
35 pointed by the court or by the state department of social and rehabilita-
36 tion services for the purpose of assessing the needs of a child who is
37 alleged to be a child in need of care.

38 (ee) “Accident” means an unforeseen event that causes or threatens
39 physical injury despite prudent efforts to avoid the risk of injury.

40 (ff) “Genuine threat” means a verbal or behavioral expression of in-
41 tent that appears true or believable.

42 (gg) “...Reasonable discipline...that does not expose the child to a sub-
43 stantial risk of harm...” means correction of a child’s behavior that does

1 *not result in or risk substantial harm from physical injury. Spanking on*
2 *a child's buttocks shall be considered reasonable discipline.*

3 (hh) *"...Reasonable effort to prevent..." means actions that an ordi-*
4 *nary and prudent person would take to stop an event from occurring.*

5 (ii) *"Substantial harm" means real and significant physical injury or*
6 *damage to a child including, but is not limited to, bruises, cuts, welts, skull*
7 *or other bone fractures, brain damage, subdural hemotoma, internal in-*
8 *juries, burns, scalds, wounds, poisoning, human bites, concussions and*
9 *dislocations and sprains.*

10 (jj) *"Substantial risk" means real and significant probability.*

11 Sec. 2. K.S.A. 38-1513 is hereby amended to read as follows: 38-
12 1513. (a) *Physical or mental care and treatment.* (1) When a child less
13 than 18 years of age is alleged to have been ~~physically, mentally or emo-~~
14 ~~tionally~~ abused or neglected ~~or sexually abused~~, no consent shall be re-
15 quired to medically examine the child to determine whether the child has
16 been maltreated.

17 (2) When the health or condition of a child who is a ward of the court
18 requires it, the court may consent to the performing and furnishing of
19 hospital, medical, surgical or dental treatment or procedures, including
20 the release and inspection of medical or dental records. A child, or parent
21 of any child, who is opposed to certain medical procedures authorized by
22 this subsection may request an opportunity for a hearing thereon before
23 the court. Subsequent to the hearing, the court may limit the performance
24 of matters provided for in this subsection or may authorize the perform-
25 ance of those matters subject to terms and conditions the court considers
26 proper.

27 (3) Prior to disposition the person having custody of the child may
28 give consent to the following:

29 (A) Dental treatment for the child by a licensed dentist;

30 (B) diagnostic examinations of the child, including but not limited to
31 the withdrawal of blood or other body fluids, x-rays and other laboratory
32 examinations;

33 (C) releases and inspections of the child's medical history records;

34 (D) immunizations for the child;

35 (E) administration of lawfully prescribed drugs to the child; and

36 (F) examinations of the child including, but not limited to, the with-
37 drawal of blood or other body fluids or tissues, for the purpose of deter-
38 mining the child's parentage.

39 (4) When the court has granted legal custody of a child in a disposi-
40 tional hearing to any agency, association or individual, the custodian or
41 an agent designated by the custodian shall have authority to consent to
42 the performance and furnishing of hospital, medical, surgical or dental
43 treatment or procedures or mental care or treatment other than inpatient

1 treatment at a state psychiatric hospital, including the release and in-
2 spection of medical or hospital records, subject to terms and conditions
3 the court considers proper.

4 (5) If a child is in the custody of the secretary, the secretary may
5 consent to the mental care and treatment of the child, without court
6 approval, so long as such care and treatment do not include inpatient
7 treatment at a state psychiatric hospital.

8 (6) Any health care provider who in good faith renders hospital, med-
9 ical, surgical, mental or dental care or treatment to any child after a con-
10 sent has been obtained as authorized by this section shall not be liable in
11 any civil or criminal action for failure to obtain consent of a parent.

12 (7) Nothing in this section shall be construed to mean that any person
13 shall be relieved of legal responsibility to provide care and support for a
14 child.

15 (b) *Mental care and treatment requiring court action.* If it is brought
16 to the court's attention, while the court is exercising jurisdiction over the
17 person of a child under this code, that the child may be a mentally ill
18 person as defined in K.S.A. ~~2000~~ 2001 Supp. 59-2946 and amendments
19 thereto, the court may:

20 (1) Direct or authorize the county or district attorney or the person
21 supplying the information to file the petition provided for in K.S.A. ~~2000~~
22 2001 Supp. 59-2957 and amendments thereto and proceed to hear and
23 determine the issues raised by the application as provided in the care and
24 treatment act for mentally ill persons; or

25 (2) authorize that the child seek voluntary admission to a treatment
26 facility as provided in K.S.A. ~~2000~~ 2001 Supp. 59-2949 and amendments
27 thereto.

28 The application to determine whether the child is a mentally ill person
29 may be filed in the same proceedings as the petition alleging the child to
30 be a child in need of care, or may be brought in separate proceedings. In
31 either event the court may enter an order staying any further proceedings
32 under this code until all proceedings have been concluded under the care
33 and treatment act for mentally ill persons.

34 Sec. 3. K.S.A. 38-1514 is hereby amended to read as follows: 38-
35 1514. (a) *Of child.* (1) *Psychological or emotional.* During proceedings
36 under this code, the court, on its own motion or the motion of the guard-
37 ian *ad litem* for the child, may order an evaluation and written report of
38 the psychological or emotional development or needs of a child who is
39 the subject of the proceedings. The court may refer the child to a state
40 institution for the evaluation if the secretary advises the court that the
41 facility is a suitable place to care for, treat or evaluate the child and that
42 space is available. The expenses of transportation to and from the state
43 facility may be paid as a part of the expenses of temporary care and

1 custody. The child may be referred to a mental health center or qualified
2 professional for evaluation and the expenses of the evaluation may be
3 considered as expenses of the proceedings and assessed as provided in
4 this code. If the court orders an evaluation as provided in this section, a
5 parent of the child shall have the right to obtain an independent evalua-
6 tion at the expense of the parent.

7 (2) *Medical.* During proceedings under this code, the court may or-
8 der an examination and report of the medical condition and needs of a
9 child who is the subject of the proceedings. The court may also order a
10 report from any physician who has been attending the child stating the
11 diagnosis, condition and treatment afforded the child.

12 (3) *Educational.* The court may order the chief administrative officer
13 of the school which the child attends or attended to provide to the court
14 information that is readily available which the school officials believe
15 would properly indicate the educational needs of the child. The order
16 may direct that the school conduct an educational needs assessment of
17 the child and send a report of the assessment to the court. The educa-
18 tional needs assessment may include a meeting involving any of the fol-
19 lowing: The child's parents, the child's teachers, the school psychologist,
20 a school special services representative, a representative of the secretary,
21 the child's C.A.S.A., the child's foster parents or legal guardian, a court
22 services officer, and other persons that the chief administrative officer of
23 the school or the officer's designee considers appropriate.

24 (b) *Of parent or custodian.* (1) *Physical, psychological or emotional.*
25 During proceedings under this code, the court may order an examination,
26 evaluation and report of the physical, mental or emotional status or needs
27 of a parent or any other relative being considered as one to whom the
28 court may grant custody. Written reports and other materials relating to
29 the examination and evaluation may be considered by the court but, if
30 requested by any interested party in attendance, the court shall require
31 the person preparing the report or other material to appear and testify.

32 (2) *Parenting skills.* At any dispositional hearing, the court may re-
33 ceive and consider written reports from any physician or qualified person
34 concerning the parenting skills or ability to provide for the physical, men-
35 tal or emotional needs and future development of a child by a parent or
36 other relative being considered for custody. If requested by any interested
37 party in attendance at the dispositional hearing, the court shall require
38 the person preparing the report to appear and testify.

39 (c) *Confidentiality of reports.* (1) *Reports of court ordered examina-*
40 *tion or evaluation.* No confidential relationship of physician and patient,
41 psychologist and client or social worker and client shall arise from an
42 examination or evaluation ordered by the court.

43 (2) *Report from private physician, psychologist or therapist.* When

1 any interested party to proceedings under this code wishes the court to
2 have the benefit of information or opinion from a physician, psychologist,
3 registered marriage and family therapist or social worker with whom there
4 is a confidential relationship, the interested party may waive the confi-
5 dential relationship but restrict the information to be furnished or testi-
6 mony to be given to those matters material to the issues before the court.
7 If requested, the court may make an *in camera* examination of the pro-
8 posed witness or the file of the proposed witness and excise any matters
9 that are not material to the issues before the court.

10 Sec. 4. K.S.A. 38-1521 is hereby amended to read as follows: 38-
11 1521. It is the policy of this state to provide for the protection of children
12 who have been subject to ~~physical, mental or emotional~~ abuse or neglect
13 ~~or sexual abuse~~ by encouraging the reporting of suspected child abuse
14 and neglect, insuring the thorough and prompt investigation of these re-
15 ports and providing preventive and rehabilitative services when appro-
16 priate to abused or neglected children and their families so that, if pos-
17 sible, the families can remain together without further threat to the
18 children.

19 The secretary, within the limit of appropriations therefor, shall conduct
20 a continuing publicity and educational program for local staff of the de-
21 partment of social and rehabilitation services, persons required to report
22 under this code and other appropriate persons. The program shall include
23 courses which encourage the reporting of cases of children suspected of
24 having been injured as a result of ~~physical, mental or emotional~~ abuse or
25 neglect ~~or sexual abuse~~. In addition, the courses shall include an analysis
26 of the powers and duties granted under this code, the methods of diag-
27 nosing injuries inflicted as a result of abuse, the procedures followed by
28 the department of social and rehabilitation services in carrying out its
29 duties under this code and the role of the courts in this area of the law.

30 Sec. 5. K.S.A. 2001 Supp. 38-1522 is hereby amended to read as
31 follows: 38-1522. (a) When any of the following persons has reason to
32 suspect that a child has been injured as a result of ~~physical, mental or~~
33 ~~emotional~~ abuse or neglect ~~or sexual abuse~~, the person shall report the
34 matter promptly as provided in subsection (c) or (e): Persons licensed to
35 practice the healing arts or dentistry; persons licensed to practice optom-
36 etry; persons engaged in postgraduate training programs approved by the
37 state board of healing arts; licensed psychologists; licensed masters level
38 psychologists; licensed clinical psychotherapists; licensed professional or
39 practical nurses examining, attending or treating a child under the age of
40 18; teachers, school administrators or other employees of a school which
41 the child is attending; chief administrative officers of medical care facil-
42 ities; licensed marriage and family therapists; licensed clinical marriage
43 and family therapists; licensed professional counselors; licensed clinical

1 professional counselors; registered alcohol and drug abuse counselors;
2 persons licensed by the secretary of health and environment to provide
3 child care services or the employees of persons so licensed at the place
4 where the child care services are being provided to the child; licensed
5 social workers; firefighters; emergency medical services personnel; me-
6 diators appointed under K.S.A. 23-602 and amendments thereto; juvenile
7 intake and assessment workers; and law enforcement officers. The report
8 may be made orally and shall be followed by a written report if requested.
9 When the suspicion is the result of medical examination or treatment of
10 a child by a member of the staff of a medical care facility or similar
11 institution, that staff member shall immediately notify the superinten-
12 dent, manager or other person in charge of the institution who shall make
13 a written report forthwith. Every written report shall contain, if known,
14 the names and addresses of the child and the child's parents or other
15 persons responsible for the child's care, the child's age, the nature and
16 extent of the child's injury (including any evidence of previous injuries)
17 and any other information that the maker of the report believes might be
18 helpful in establishing the cause of the injuries and the identity of the
19 persons responsible for the injuries.

20 (b) Any other person who has reason to suspect that a child has been
21 injured as a result of ~~physical, mental or emotional~~ abuse or neglect ~~or~~
22 ~~sexual abuse~~ may report the matter as provided in subsection (c) or (e).

23 (c) Except as provided by subsection (e), reports made pursuant to
24 this section shall be made to the state department of social and rehabil-
25 itation services. When the department is not open for business, the re-
26 ports shall be made to the appropriate law enforcement agency. On the
27 next day that the state department of social and rehabilitation services is
28 open for business, the law enforcement agency shall report to the de-
29 partment any report received and any investigation initiated pursuant to
30 subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports
31 may be made orally or, on request of the department, in writing.

32 (d) Any person who is required by this section to report an injury to
33 a child and who knows of the death of a child shall notify immediately
34 the coroner as provided by K.S.A. 22a-242, and amendments thereto.

35 (e) Reports of child abuse or neglect occurring in an institution op-
36 erated by the secretary of social and rehabilitation services or the com-
37 missioner of juvenile justice shall be made to the attorney general. All
38 other reports of child abuse or neglect by persons employed by or of
39 children of persons employed by the state department of social and re-
40 habilitation services or the juvenile justice authority shall be made to the
41 appropriate law enforcement agency.

42 (f) Willful and knowing failure to make a report required by this sec-
43 tion is a class B misdemeanor.

1 (g) Preventing or interfering with, with the intent to prevent, the
 2 making of a report required by this section is a class B misdemeanor.

3 Sec. 6. K.S.A. 38-1523a is hereby amended to read as follows: 38-
 4 1523a. (a) Upon recommendation of the state department of social and
 5 rehabilitation services or the county or district attorney, the court may
 6 appoint a multidisciplinary team to assist in gathering information re-
 7 garding a child alleged to be a child in need of care by reason of physical,
 8 ~~mental or emotional~~ abuse or neglect ~~or sexual abuse~~. The team may be
 9 a standing multidisciplinary team or may be appointed for a specific child.

10 (b) Any person appointed as a member of a multidisciplinary team
 11 may decline to serve and shall incur no civil liability as the result of de-
 12 clining to serve.

13 (c) This section shall be part of and supplemental to the Kansas code
 14 for care of children.

15 (d) The multidisciplinary team may request disclosure of information
 16 in regard to a child alleged to be a child in need of care, or a child who
 17 has been adjudged to be a child in need of care, by making a written
 18 verified application to the district court. Upon a finding by the court there
 19 is probable cause to believe the information sought may assist in deter-
 20 mining if a child is a child in need of care as defined in K.S.A. 38-1502
 21 and amendments thereto, or in assisting a child who has been adjudicated
 22 a child in need of care, then the court may issue a subpoena, subpoena
 23 duces tecum or enter an order for the production of the requested doc-
 24 uments, reports or information and directing the document, reports or
 25 information to be delivered to the applicant at a specified time, date and
 26 place. The time and date of delivery shall not be sooner than five days
 27 after the service of the subpoena or order, excluding Saturdays, Sundays
 28 or holidays. The court issuing the subpoena or order shall keep all appli-
 29 cations filed pursuant to this subsection and a copy of the subpoena or
 30 order in a special file maintained for such purpose or in the official court
 31 file for the child. Upon receiving service of a subpoena, subpoena duces
 32 tecum or an order for production pursuant to this subsection, the party
 33 served shall give oral or written notice of service to any person known to
 34 have a right to assert a privilege or assert a right of confidentiality in regard
 35 to the documents, reports or information sought at least three days before
 36 the specified date of delivery.

37 (e) The written verified application shall be in substantially the fol-
 38 lowing form:

39 Name of Court

40 In the Interest of _____ Case No.

41 Name(s)

42 Date of birth: _____

43 Each a child under 18 years of age.

WRITTEN APPLICATION FOR DISCLOSURE OF INFORMATION

County of _____

ss

State of Kansas

The undersigned applicant being first duly sworn alleges and states as follows:

- 1. The applicant is _____.
- 2. There is an investigation being made into the report of alleged neglect or abuse in regard to the above-named child or children.
A petition has been filed alleging the above-named child is a child in need of care or the child has been adjudicated to be a child in need of care.
- 3. The following documents, reports and/or information are requested. (List specifically.)
- 4. The reasons for the request are:
Further applicant saith not.

Applicant

Subscribed and sworn to before me
this _____ day of _____, 20_____.

Notary Public

My commission expires:

(f) Any parent, child, guardian ad litem, party subpoenaed or subject to an order of production or person who claims a privilege or right of confidentiality may request in writing that the court issuing the subpoena or order for production withdraw the subpoena, subpoena duces tecum or order for production issued pursuant to subsection (d). The request shall automatically stay the operation of the subpoena, subpoena duces tecum or order for production and the documents, reports or information requested shall not be delivered until the issuing court has held a hearing to determine if the documents, reports or information are subject to the claimed privilege or right of confidentiality, and whether it is in the best interests of the child for the subpoena or order to produce to be honored. The request to withdraw shall be filed with the district court issuing the subpoena or order at least 24 hours prior to the specified time and date of delivery, excluding Saturdays, Sundays or holidays, and a copy of the written request must be given to the person subpoenaed or subject to the order for production at least 24 hours prior to the specified time and date of delivery.

Sec. 7. K.S.A. 38-1525 is hereby amended to read as follows: 38-1525. (a) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee because the employee made an oral or written report to, or

1 cooperated with an investigation by, a law enforcement agency or the
2 department of social and rehabilitation services relating to injury inflicted
3 upon a child which was suspected by the employee of having resulted
4 from the ~~physical, mental or emotional~~ abuse or neglect ~~or sexual abuse~~
5 of the child.

6 (b) Violation of this section is a class B misdemeanor.

7 Sec. 8. K.S.A. 38-1526 is hereby amended to read as follows: 38-
8 1526. Anyone participating without malice in the making of an oral or
9 written report to a law enforcement agency or the department of social
10 and rehabilitation services relating to injury inflicted upon a child under
11 18 years of age as a result of ~~physical, mental or emotional~~ abuse or
12 neglect ~~or sexual abuse~~ or in any follow-up activity to or investigation of
13 the report shall have immunity from any civil liability that might otherwise
14 be incurred or imposed. Any such participant shall have the same im-
15 munity with respect to participation in any judicial proceedings resulting
16 from the report.

17 Sec. 9. K.S.A. 38-1528 is hereby amended to read as follows: 38-
18 1528. (a) To the extent possible, when any law enforcement officer takes
19 into custody a child under the age of 18 years, without a court order, the
20 child shall forthwith be delivered to the custody of the child's parent or
21 other custodian unless there are reasonable grounds to believe that such
22 action would not be in the best interests of the child. Except as provided
23 in subsection (b), if the child is not delivered to the custody of the child's
24 parent or other custodian, the child shall forthwith be delivered to a fa-
25 cility or person designated by the secretary or to a court designated shelter
26 facility, court services officer, juvenile intake and assessment worker, li-
27 censed attendant care center or other person. If, after delivery of the
28 child to a shelter facility, the person in charge of the shelter facility at
29 that time and the law enforcement officer determine that the child will
30 not remain in the shelter facility, the law enforcement officer shall deliver
31 the child to a juvenile detention facility or other secure facility, designated
32 by the court, where the child shall be detained for not more than 24
33 hours, excluding Saturdays, Sundays and legal holidays. ~~It shall be the~~
34 ~~duty of the law enforcement officer to furnish to the county or district~~
35 ~~attorney, without unnecessary delay, all the information in the possession~~
36 ~~of the officer pertaining to the child, the child's parents or other persons~~
37 ~~interested in or likely to be interested in the child and all other facts and~~
38 ~~circumstances which caused the child to be taken into custody.~~

39 (b) When any law enforcement officer takes into custody any child as
40 provided in subsection (c) of K.S.A. 38-1527 and amendments thereto,
41 proceedings shall be initiated in accordance with the provisions of the
42 interstate compact on juveniles, K.S.A. 38-1001 *et seq.* and amendments
43 thereto. Any child taken into custody pursuant to the interstate compact

1 on juveniles may be detained in a juvenile detention facility or other
2 secure facility.

3 (c) Whenever a child under the age of 18 years is taken into custody
4 by a law enforcement officer without a court order and is thereafter
5 placed in the custody of a shelter facility, court services officer, juvenile
6 intake and assessment worker, licensed attendant care center or other
7 person as authorized by this code, the facility or person shall have physical
8 custody and provide care and supervision for the child upon written ap-
9 plication of the law enforcement officer. The application shall state:

10 (1) The name and address of the child, if known;

11 (2) the names and addresses of the child's parents or nearest relatives
12 and persons with whom the child has been residing, if known; and

13 (3) the officer's belief that the child is a child in need of care and that
14 there are reasonable grounds to believe that the circumstances or con-
15 dition of the child is such that, unless the child is placed in the immediate
16 custody of the shelter facility or other person, it would be harmful to the
17 child.

18 (d) ~~A copy of the application shall be furnished by the facility or~~
19 ~~person receiving the child to the county or district attorney without un-~~
20 ~~necessary delay. When a child is placed in a secure facility pursuant to~~
21 ~~subsection (a) or placed in custody pursuant to subsection (e), the law~~
22 ~~enforcement officer, court services officer or juvenile intake and assess-~~
23 ~~ment worker, or all of the aforementioned, shall use the 24 or 72 hours,~~
24 ~~whichever is applicable, to investigate and evaluate whether the circum-~~
25 ~~stances and information require that the county or district attorney be~~
26 ~~notified.~~

27 (e) The shelter facility or other person designated by the court who
28 has custody of the child pursuant to this section shall discharge the child
29 not later than 72 hours following admission, excluding Saturdays, Sundays
30 and legal holidays, unless a court has entered an order pertaining to tem-
31 porary custody or release.

32 (f) In absence of a court order to the contrary, the ~~county or district~~
33 ~~attorney or the~~ placing law enforcement agency shall have the authority
34 to direct at any time the release of the child.

35 (g) When any law enforcement officer takes into custody any child as
36 provided in subsection (d) of K.S.A. 38-1527, and amendments thereto,
37 the child shall forthwith be delivered to the school in which the child is
38 enrolled, any location designated by the school in which the child is en-
39 rolled to address truancy issues or the child's parent or other custodian.

40 Sec. 10. K.S.A. 38-1541 is hereby amended to read as follows: 38-
41 1541. (a) Upon motion of any person with whom the child has been
42 residing or who is within the fourth degree of relationship to the child
43 and who desires to have standing to participate in the proceedings re-

1 guarding the child, the court may order that the person may participate in
2 the proceedings. Upon the filing of the motion, the court may send to
3 the department of social and rehabilitation services a copy of the motion.
4 Upon its receipt, the department shall make an investigation of the ad-
5 visability of the matter and report its findings and recommendations to
6 the court. In determining whether to enter the order, the court shall take
7 into consideration the length of time the child has resided with the per-
8 son, the nature of the custody, the relationship between the child and the
9 person and the degree to which the person has been standing in the place
10 of or assumed the obligations of the child's parent. The status as an in-
11 terested party granted pursuant to this ~~section~~ subsection may be termi-
12 nated at any time by order of the court.

13 *(b) The parent of the child may appoint up to two people to act as*
14 *such parent's advocate and participate in the proceedings regarding the*
15 *child. Such person or persons shall be considered interested parties. The*
16 *status as an interested party pursuant to this subsection may not be ter-*
17 *minated at any time by the court.*

18 Sec. 11. K.S.A. 38-1542 is hereby amended to read as follows: 38-
19 1542. (a) The court upon verified application may issue *ex parte* an order
20 directing that a child be held in protective custody and, if the child has
21 not been taken into custody, an order directing that the child be taken
22 into custody. The application shall state for each child:

23 (1) The applicant's belief that the child is a child in need of care and
24 that allowing the child to remain in the home is contrary to the welfare
25 of the child or placement is in the best interest of the child and that the
26 child is likely to sustain harm if not immediately afforded protective cus-
27 tody; and

28 (2) the facts which are relied upon to support the application, in-
29 cluding efforts known to the applicant, to maintain the family unit and
30 prevent the unnecessary removal of the child from the child's home, or
31 the specific facts supporting that an emergency exists which threatens the
32 safety of the child.

33 (b) (1) The order of protective custody may be issued only after the
34 court has determined there is probable cause to believe the allegations
35 in the application are true. The order shall remain in effect until the
36 temporary custody hearing provided for in K.S.A. 38-1543, and amend-
37 ments thereto, unless earlier rescinded by the court.

38 (2) No child shall be held in protective custody for more than 72
39 hours, excluding Saturdays, Sundays and legal holidays, unless within the
40 72-hour period a determination is made as to the necessity for temporary
41 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
42 shall be construed to mean that the child must remain in protective cus-
43 tody for 72 hours.

1 (c) Whenever the court determines the necessity for an order of pro-
2 tective custody, the court may place the child in the protective custody
3 of: (1) A parent or other person having custody of the child and may enter
4 a restraining order pursuant to subsection (e); (2) a person, other than
5 the parent or other person having custody, who shall not be required to
6 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
7 tated; (3) a youth residential facility; or (4) the secretary if the child is
8 alleged to be a child in need of care the court may award custody to the
9 secretary. However, if the secretary presents the court with a plan to
10 provide services to a child or family which the court finds will assure the
11 safety of the child, the court may only place the child in the protective
12 custody of the secretary until the court finds the services are in place.
13 The court shall have the authority to require any person or entity agreeing
14 to participate in the plan to perform as set out in the plan. When the
15 child is placed in the protective custody of the secretary, the secretary
16 shall have the discretionary authority to place the child with a parent or
17 to make other suitable placement for the child. When circumstances re-
18 quire, a child in protective custody may be placed in a juvenile detention
19 facility or other secure facility pursuant to an order of protective custody
20 for not to exceed 24 hours, excluding Saturdays, Sundays and legal holi-
21 days.

22 (d) The order of protective custody shall be served on the child's
23 parents and any other person having legal custody of the child. The order
24 shall prohibit all parties from removing the child from the court's juris-
25 diction without the court's permission.

26 (e) If the court issues an order of protective custody, the court may
27 also enter an order restraining any alleged perpetrator of ~~physical, sexual,~~
28 ~~mental or emotional~~ abuse of the child from residing in the child's home;
29 visiting, contacting, harassing or intimidating the child, other family mem-
30 ber or witness; or attempting to visit, contact, harass or intimidate the
31 child, other family member or witness. Such restraining order shall be
32 served on any alleged perpetrator to whom the order is directed.

33 (f) The court shall not enter an order removing a child from the
34 custody of a parent pursuant to this section unless the court first finds
35 from evidence presented by the petitioner that reasonable efforts have
36 been made to maintain the family unit and prevent the unnecessary re-
37 moval of the child from the child's home or that an emergency exists
38 which threatens the safety of the child and that remaining in the home is
39 contrary to the welfare of the child or that immediate placement is in the
40 best interest of the child. Such findings shall be included in any order
41 entered by the court. If the child is placed in the custody of the secretary,
42 the court shall provide the secretary with a written copy of any orders
43 entered for the purpose of documenting these orders upon making the

1 order.

2 Sec. 12. K.S.A. 38-1543 is hereby amended to read as follows: 38-
3 1543. (a) Upon notice and hearing, the court may issue an order directing
4 who shall have temporary custody and may modify the order during the
5 pendency of the proceedings as will best serve the child's welfare.

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

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

13 (Name of Court)

14 (Caption of Case)

15 NOTICE OF TEMPORARY CUSTODY HEARING

16 TO:

17 (Names) (Relationship) (Addresses)

18 _____
19 _____
20 _____

21 On _____, _____, (year), at _____ o'clock _____ m.

22 (day) (date)

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

28 _____, an attorney, has been appointed as guardian *ad litem* for the child or
29 children. Each parent or other legal custodian has the right to appear and be heard person-
30 ally, either with or without an attorney. An attorney will be appointed for a parent who can
31 show that the parent is not financially able to hire one.

32 Date _____, (year) Clerk of the District Court
33 by _____
34 (Seal)

35 REPORT OF SERVICE

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

38 Name	39 Location of Service (other than above)	Manner of Service	Date	Time
40 _____	_____	_____	_____	_____
41 _____	_____	_____	_____	_____
42 _____	_____	_____	_____	_____

43 Date Returned _____, _____(year)

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(Signature)

(Title)

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

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

(Name of Court)

(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

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

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

I advised each of the above persons that:

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

(Signature)

(Name Printed)

(Title)

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

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

(h) If the court issues an order of temporary custody, the court may enter an order restraining any alleged perpetrator of ~~physical, sexual, mental or emotional~~ abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child.

(i) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child and that remaining in the home is contrary to the welfare of the child or that placement is in the best interest

1 of the child. Such findings shall be included in any order entered by the
2 court. If the child is placed in the custody of the secretary, the court shall
3 provide the secretary with a written copy of any orders entered for the
4 purpose of documenting these orders upon making the order.

5 Sec. 13. K.S.A. 38-1544 is hereby amended to read as follows: 38-
6 1544. (a) At any time after filing a petition, but prior to an adjudication,
7 the court may enter an order for continuance and informal supervision
8 without an adjudication if no interested party objects. Upon granting the
9 continuance, the court shall include in the order any conditions with
10 which the interested parties are expected to comply and provide the parties
11 with a copy of the order. The conditions may include appropriate
12 dispositional alternatives authorized by K.S.A. 38-1563 and amendments
13 thereto.

14 (b) An order for informal supervision may remain in force for a period
15 of up to six months and may be extended, upon hearing, for an additional
16 six-month period for a total of one year.

17 (c) The court after notice and hearing may revoke or modify the order
18 with respect to a party upon a showing that the party, being subject to
19 the order for informal supervision, has substantially failed to comply with
20 the terms of the order, or that modification would be in the best interests
21 of the child. Upon revocation, proceedings shall resume pursuant to this
22 code.

23 (d) Parties to the order for informal supervision who successfully
24 complete the terms and period of supervision shall not again be pro-
25 ceeded against in any court based solely upon the allegations in the orig-
26 inal petition and the proceedings shall be dismissed.

27 (e) If the court issues an order for informal supervision pursuant to
28 this section, the court may enter an order restraining any alleged perpe-
29 trator of ~~physical, sexual, mental or emotional~~ abuse of the child from
30 residing in the child's home, visiting, contacting, harassing or intimidating
31 the child, other family member or witness; or attempting to visit, contact,
32 harass or intimidate the child, other family member or witness.

33 Sec. 14. K.S.A. 38-1557 is hereby amended to read as follows: 38-
34 1557. In any proceeding pursuant to the Kansas code for care of children
35 in which a child less than 13 years of age is alleged to have been ~~physically,~~
36 ~~mentally or emotionally~~ abused or neglected ~~or sexually abused~~, a re-
37 cording of an oral statement of the child, or of any witness less than 13
38 years of age, made before the proceeding began, is admissible in evidence
39 if:

40 (a) The court determines that the time, content and circumstances
41 of the statement provide sufficient indicia of reliability;

42 (b) no attorney for any party is present when the statement is made;

43 (c) the recording is both visual and aural and is recorded on film or

1 videotape or by other electronic means;

2 (d) the recording equipment is capable of making an accurate re-
3 cording, the operator of the equipment is competent and the recording
4 is accurate and has not been altered;

5 (e) the statement is not made in response to questioning calculated
6 to lead the child to make a particular statement or is clearly shown to be
7 the child's statement and not made solely as a result of a leading or sug-
8 gestive question;

9 (f) every voice on the recording is identified;

10 (g) the person conducting the interview of the child in the recording
11 is present at the proceeding and is available to testify or be cross-examined
12 by any party; and

13 (h) each party to the proceeding is afforded an opportunity to view
14 the recording before it is offered into evidence, and a copy of a written
15 transcript is provided to the parties.

16 Sec. 15. K.S.A. 38-1558 is hereby amended to read as follows: 38-
17 1558. (a) On motion of any party to a proceeding pursuant to the Kansas
18 code for care of children in which a child less than 13 years of age is
19 alleged to have been ~~physically, mentally or emotionally~~ abused or ne-
20 glected ~~or sexually abused~~, the court may order that the testimony of the
21 child, or of any witness less than 13 years of age, be taken:

22 (1) In a room other than the courtroom and be televised by closed-
23 circuit equipment in the courtroom to be viewed by the court, the finder
24 of fact and the parties to the proceeding; or

25 (2) outside the courtroom and be recorded for showing in the court-
26 room before the court, the finder of fact and the parties to the proceeding
27 if: (A) The recording is both visual and aural and is recorded on film or
28 videotape or by other electronic means; (B) the recording equipment is
29 capable of making an accurate recording, the operator of the equipment
30 is competent and the recording is accurate and has not been altered; (C)
31 every voice on the recording is identified; and (D) each party to the
32 proceeding is afforded an opportunity to view the recording before it is
33 shown in the courtroom, and a copy of a written transcript is provided to
34 the parties.

35 (b) At the taking of testimony under this section:

36 (1) Only an attorney for each party, the guardian *ad litem* for the
37 child or other person whose presence would contribute to the welfare
38 and well-being of the child and persons necessary to operate the recording
39 or closed-circuit equipment may be present in the room with the child
40 during the child's testimony;

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

42 (3) the persons operating the recording or closed-circuit equipment
43 shall be confined to an adjacent room or behind a screen or mirror that

1 permits them to see and hear the child during the child's testimony, but
2 does not permit the child to see or hear them.

3 (c) If the testimony of a child is taken as provided by this section, the
4 child shall not be compelled to testify in court during the proceeding.

5 (d) (1) Any objection by any party to the proceeding to a recording
6 under subsection (a)(2) is inadmissible must be made by written motion
7 filed with the court at least seven days before the commencement of the
8 adjudicatory hearing. An objection under this subsection shall specify the
9 portion of the recording which is objectionable and the reasons for the
10 objection. Failure to file an objection within the time provided by this
11 subsection shall constitute waiver of the right to object to the admissibility
12 of the recording unless the court, in its discretion, determines otherwise.

13 (2) The provisions of this subsection (d) shall not apply to any objec-
14 tion to admissibility for the reason that the recording has been materially
15 altered.

16 Sec. 16. K.S.A. 38-1563 is hereby amended to read as follows: 38-
17 1563. (a) After consideration of any evidence offered relating to disposi-
18 tion, the court may retain jurisdiction and place the child in the custody
19 of the child's parent subject to terms and conditions which the court
20 prescribes to assure the proper care and protection of the child, including
21 supervision of the child and the parent by a court services officer, or may
22 order the child and the parent to participate in programs operated by the
23 secretary or another appropriate individual or agency. The terms and
24 conditions may require any special treatment or care which the child
25 needs for the child's physical, mental or emotional health.

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

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

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

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

3 (2) any other suitable person;

4 (3) a shelter facility; or

5 (4) the secretary.

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

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

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

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

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

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

42 (4) When the secretary provides the court with a plan to provide
43 services to a child or family which the court finds is in place and which

1 will assure the safety of the child, the court shall approve the return of
2 the child to the child's home. The court shall have the authority to require
3 any person or entity agreeing to participate in the plan to perform as set
4 out in the plan.

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

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

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

43 (i) In addition to or in lieu of any other order authorized by this

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

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

35 Sec. 17. K.S.A. 38-1513, 38-1514, 38-1521, 38-1523a, 38-1525, 38-
36 1526, 38-1528, 38-1541, 38-1542, 38-1543, 38-1544, 38-1557, 38-1558
37 and 38-1563 and K.S.A. 2001 Supp. 38-1502 and 38-1522 are hereby
38 repealed.

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