

HOUSE BILL No. 2494

By Committee on Federal and State Affairs

1-20

9 AN ACT concerning children in need of care; relating to removal of child
10 from parent's custody; amending K.S.A. 2009 Supp. 38-2255 and 38-
11 2269 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 38-2255 is hereby amended to read as
15 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-
16 position, the court shall give consideration to:

- 17 (1) The child's physical, mental and emotional condition;
- 18 (2) the child's need for assistance;
- 19 (3) the manner in which the parent participated in the abuse, neglect
20 or abandonment of the child;
- 21 (4) any relevant information from the intake and assessment process;
22 and
- 23 (5) the evidence received at the dispositional hearing.

24 (b) *Placement with a parent*. The court may place the child in the
25 custody of either of the child's parents subject to terms and conditions
26 which the court prescribes to assure the proper care and protection of
27 the child, including, but not limited to:

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

33 (c) *Removal of a child from custody of a parent*. The court shall not
34 enter an order removing a child from the custody of a parent pursuant
35 to this section unless the court first finds probable cause that: (1)(A) The
36 child is likely to sustain harm if not immediately removed from the home;

37 (B) allowing the child to remain in home is contrary to the welfare
38 of the child; or

39 (C) immediate placement of the child is in the best interest of the
40 child; and

41 (2) reasonable efforts have been made to maintain the family unit
42 and prevent the unnecessary removal of the child from the child's home
43 or that an emergency exists which threatens the safety to the child.

- 1 *The court shall not enter an order removing a child from the custody*
2 *of a parent pursuant to this section based solely on the finding that the*
3 *parent is homeless.*
- 4 (d) *Custody of a child removed from the custody of a parent.* If the
5 court has made the findings required by subsection (c), the court shall
6 enter an order awarding custody to a relative of the child or to a person
7 with whom the child has close emotional ties, to any other suitable person,
8 to a shelter facility, to a youth residential facility or, if the child is 15 years
9 of age or younger, or 16 or 17 years of age if the child has no identifiable
10 parental or family resources or shows signs of physical, mental, emotional
11 or sexual abuse, to the secretary. Custody awarded under this subsection
12 shall continue until further order of the court.
- 13 (1) When custody is awarded to the secretary, the secretary shall con-
14 sider any placement recommendation by the court and notify the court
15 of the placement or proposed placement of the child within 10 days of
16 the order awarding custody.
- 17 (A) After providing the parties or interested parties notice and op-
18 portunity to be heard, the court may determine whether the secretary's
19 placement or proposed placement is contrary to the welfare or in the best
20 interests of the child. In making that determination the court shall con-
21 sider the health and safety needs of the child and the resources available
22 to meet the needs of children in the custody of the secretary. If the court
23 determines that the placement or proposed placement is contrary to the
24 welfare or not in the best interests of the child, the court shall notify the
25 secretary, who shall then make an alternative placement.
- 26 (B) The secretary may propose and the court may order the child to
27 be placed in the custody of a parent or parents if the secretary has pro-
28 vided and the court has approved an appropriate safety action plan which
29 includes services to be provided. The court may order the parent or par-
30 ents and the child to perform tasks as set out in the safety action plan.
- 31 (2) The custodian designated under this subsection shall notify the
32 court in writing at least 10 days prior to any planned placement with a
33 parent. The written notice shall state the basis for the custodian's belief
34 that placement with a parent is no longer contrary to the welfare or best
35 interest of the child. Upon reviewing the notice, the court may allow the
36 custodian to proceed with the planned placement or may set the date for
37 a hearing to determine if the child shall be allowed to return home. If
38 the court sets a hearing on the matter, the custodian shall not return the
39 child home without written consent of the court.
- 40 (3) The court may grant any person reasonable rights to visit the child
41 upon motion of the person and a finding that the visitation rights would
42 be in the best interests of the child.
- 43 (4) The court may enter an order restraining any alleged perpetrator

1 of physical, mental or emotional abuse or sexual abuse of the child from
2 residing in the child's home; visiting, contacting, harassing or intimidating
3 the child, other family member or witness; or attempting to visit, contact,
4 harass or intimidate the child, other family member or witness. Such
5 restraining order shall be served by personal service pursuant to subsec-
6 tion (a) of K.S.A. 2009 Supp. 38-2237, and amendments thereto, on any
7 alleged perpetrator to whom the order is directed.

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

11 (e) *Further determinations regarding a child removed from the home.*
12 If custody has been awarded under subsection (d) to a person other than
13 a parent, a permanency plan shall be provided or prepared pursuant to
14 K.S.A. 2009 Supp. 38-2264, and amendments thereto. If a permanency
15 plan is provided at the dispositional hearing, the court may determine
16 whether reintegration is a viable alternative or, if reintegration is not a
17 viable alternative, whether the child should be placed for adoption or a
18 permanent custodian appointed. In determining whether reintegration is
19 a viable alternative, the court shall consider:

20 (1) Whether a parent has been found by a court to have committed
21 one of the following crimes or to have violated the law of another state
22 prohibiting such crimes or to have aided and abetted, attempted, con-
23 spired or solicited the commission of one of these crimes: Murder in the
24 first degree, K.S.A. 21-3401, and amendments thereto, murder in the
25 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,
26 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.
27 21-3403, and amendments thereto, or a felony battery that resulted in
28 bodily injury;

29 (2) whether a parent has subjected the child or another child to ag-
30 gravated circumstances;

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

34 (4) whether the child has been in extended out of home placement;

35 (5) whether the parents have failed to work diligently toward
36 reintegration;

37 (6) whether the secretary has provided the family with services nec-
38 essary for the safe return of the child to the home; and

39 (7) whether it is reasonable to expect reintegration to occur within a
40 time frame consistent with the child's developmental needs.

41 (f) *Proceedings if reintegration is not a viable alternative.* If the court
42 determines that reintegration is not a viable alternative, proceedings to
43 terminate parental rights and permit placement of the child for adoption

1 or appointment of a permanent custodian shall be initiated unless the
2 court finds that compelling reasons have been documented in the case
3 plan why adoption or appointment of a permanent custodian would not
4 be in the best interests of the child. If compelling reasons have not been
5 documented, the county or district attorney shall file a motion within 30
6 days to terminate parental rights or a motion to appoint a permanent
7 custodian within 30 days and the court shall hold a hearing on the motion
8 within 90 days of its filing. No hearing is required when the parents
9 voluntarily relinquish parental rights or consent to the appointment of a
10 permanent custodian.

11 (g) *Additional Orders.* In addition to or in lieu of any other order
12 authorized by this section:

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

20 (2) If the court has reason to believe that a child is before the court
21 due, in whole or in part, to the use or misuse of alcohol or a violation of
22 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto,
23 by the child, a parent of the child, or another person responsible for the
24 care of the child, the court may order the child, parent of the child or
25 other person responsible for the care of the child to submit to and com-
26 plete an alcohol and drug evaluation by a qualified person or agency and
27 comply with any recommendations. If the evaluation is performed by a
28 community-based alcohol and drug safety program certified pursuant to
29 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
30 other person responsible for the care of the child shall pay a fee not to
31 exceed the fee established by that statute. If the court finds that the child
32 and those legally liable for the child's support are indigent, the fee may
33 be waived. In no event shall the fee be assessed against the secretary.

34 (3) If child support has been requested and the parent or parents
35 have a duty to support the child, the court may order one or both parents
36 to pay child support and, when custody is awarded to the secretary, the
37 court shall order one or both parents to pay child support. The court shall
38 determine, for each parent separately, whether the parent is already sub-
39 ject to an order to pay support for the child. If the parent is not presently
40 ordered to pay support for any child who is subject to the jurisdiction of
41 the court and the court has personal jurisdiction over the parent, the court
42 shall order the parent to pay child support in an amount determined
43 under K.S.A. 2009 Supp. 38-2277, and amendments thereto. Except for

1 good cause shown, the court shall issue an immediate income withholding
2 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for
3 each parent ordered to pay support under this subsection, regardless of
4 whether a payor has been identified for the parent. A parent ordered to
5 pay child support under this subsection shall be notified, at the hearing
6 or otherwise, that the child support order may be registered pursuant to
7 K.S.A. 2009 Supp. 38-2279, and amendments thereto. The parent shall
8 also be informed that, after registration, the income withholding order
9 may be served on the parent's employer without further notice to the
10 parent and the child support order may be enforced by any method al-
11 lowed by law. Failure to provide this notice shall not affect the validity of
12 the child support order.

13 Sec. 2. K.S.A. 2009 Supp. 38-2269 is hereby amended to read as
14 follows: 38-2269. (a) When the child has been adjudicated to be a child
15 in need of care, the court may terminate parental rights or appoint a
16 permanent custodian when the court finds by clear and convincing evi-
17 dence that the parent is unfit by reason of conduct or condition which
18 renders the parent unable to care properly for a child and the conduct or
19 condition is unlikely to change in the foreseeable future.

20 (b) In making a determination of unfitness the court shall consider,
21 but is not limited to, the following, if applicable:

22 (1) Emotional illness, mental illness, mental deficiency or physical
23 disability of the parent, of such duration or nature as to render the parent
24 unable to care for the ongoing physical, mental and emotional needs of
25 the child;

26 (2) conduct toward a child of a physically, emotionally or sexually
27 cruel or abusive nature;

28 (3) the use of intoxicating liquors or narcotic or dangerous drugs of
29 such duration or nature as to render the parent unable to care for the
30 ongoing physical, mental or emotional needs of the child;

31 (4) physical, mental or emotional abuse or neglect or sexual abuse of
32 a child;

33 (5) conviction of a felony and imprisonment;

34 (6) unexplained injury or death of another child or stepchild of the
35 parent or any child in the care of the parent at the time of injury or death;

36 (7) failure of reasonable efforts made by appropriate public or private
37 agencies to rehabilitate the family;

38 (8) lack of effort on the part of the parent to adjust the parent's cir-
39 cumstances, conduct or conditions to meet the needs of the child; and

40 (9) whether the child has been in extended out of home placement
41 as a result of actions or inactions attributable to the parent and one or
42 more of the factors listed in subsection (c) apply.

43 (c) In addition to the foregoing, when a child is not in the physical

1 custody of a parent, the court, shall consider, but is not limited to, the
2 following:

3 (1) Failure to assure care of the child in the parental home when able
4 to do so;

5 (2) failure to maintain regular visitation, contact or communication
6 with the child or with the custodian of the child;

7 (3) failure to carry out a reasonable plan approved by the court di-
8 rected toward the integration of the child into a parental home; and

9 (4) failure to pay a reasonable portion of the cost of substitute physical
10 care and maintenance based on ability to pay.

11 In making the above determination, the court may disregard incidental
12 visitations, contacts, communications or contributions.

13 (d) A finding of unfitness may be made as provided in this section if
14 the court finds that the parents have abandoned the child, the custody of
15 the child was surrendered pursuant to K.S.A. 2009 Supp. 38-2282, and
16 amendments thereto, or the child was left under such circumstances that
17 the identity of the parents is unknown and cannot be ascertained, despite
18 diligent searching, and the parents have not come forward to claim the
19 child within three months after the child is found.

20 (e) If a person is convicted of a felony in which sexual intercourse
21 occurred, or if a juvenile is adjudicated a juvenile offender because of an
22 act which, if committed by an adult, would be a felony in which sexual
23 intercourse occurred, and as a result of the sexual intercourse, a child is
24 conceived, a finding of unfitness may be made.

25 (f) The existence of any one of the above factors standing alone may,
26 but does not necessarily, establish grounds for termination of parental
27 rights. *The court shall not terminate parental rights of any parent, unless:*

28 (1) (A) *The parent has a prior felony conviction or certain misde-*
29 *meanor conviction which relates to parenting duties or responsibilities or*
30 *(B) the child has a prior felony or misdemeanor conviction; or*

31 (2) *the parent has been declared incompetent by a court of proper*
32 *jurisdiction; and*

33 (g) (1) If the court makes a finding of unfitness, the court shall con-
34 sider whether termination of parental rights as requested in the petition
35 or motion is in the best interests of the child. In making the determina-
36 tion, the court shall give primary consideration to the physical, mental
37 and emotional health of the child. If the physical, mental or emotional
38 needs of the child would best be served by termination of parental rights,
39 the court shall so order. A termination of parental rights under the code
40 shall not terminate the right of a child to inherit from or through a parent.
41 Upon such termination all rights of the parent to such child, including,
42 such parent's right to inherit from or through such child, shall cease.

43 (2) If the court terminates parental rights, the court may authorize

1 adoption pursuant to K.S.A. 2009 Supp. 38-2270, and amendments
2 thereto, appointment of a permanent custodian pursuant to K.S.A. 2009
3 Supp. 38-2272, and amendments thereto, or continued permanency
4 planning.

5 (3) If the court does not terminate parental rights, the court may
6 authorize appointment of a permanent custodian pursuant to K.S.A. 2009
7 Supp. 38-2272, and amendments thereto, or continued permanency
8 planning.

9 (h) If a parent is convicted of an offense as provided in subsection
10 (a)(7) of K.S.A. 2009 Supp. 38-2271, and amendments thereto, or is ad-
11 judicated a juvenile offender because of an act which if committed by an
12 adult would be an offense as provided in subsection (a)(7) of K.S.A. 2009
13 Supp. 38-2271, and amendments thereto, and if the victim was the other
14 parent of a child, the court may disregard such convicted or adjudicated
15 parent's opinions or wishes in regard to the placement of such child.

16 (i) A record shall be made of the proceedings.

17 (j) When adoption, proceedings to appoint a permanent custodian or
18 continued permanency planning has been authorized, the person or
19 agency awarded custody of the child shall within 30 days submit a written
20 plan for permanent placement which shall include measurable objectives
21 and time schedules.

22 Sec. 3. K.S.A. 2009 Supp. 38-2255 and 38-2269 are hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the statute book.