

Approved: 2/13/01  
Date

MINUTES OF THE HOUSE K-12 EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Ralph Tanner at 9:00 a.m. on February 5, 2001 in Room 313-S of the Capitol.

All members were present except:

Committee staff present: Carolyn Rampey, Legislative Research  
Avis Swartzman, Revisor of Statutes  
Ann Deitcher, Committee Secretary

Conferees appearing before the committee:

Representative Benlon moved that the minutes for January 22, 24, 29 and 31 be approved. Representative Storm seconded the motion that was passed by a voice vote.

**HB 2023 - An act concerning juveniles; relating to school attendance.**

Representative Horst spoke to the Committee in regard to **HB 2023**, pointing out the recommendations of the sub-committee. (Attachment 1). She reminded the Committee that if changes weren't made to the existing bill, there was a possible loss of federal funding in the amount of \$1 million, 350 thousand.

Representative Horst pointed to page 8, line 14, the word "bonus" and asked that it be replaced with the word "grant".

She then called their attention, again on page 8, to line 19, to "As used in this section, 'significant part of a school day' means an absence from a class period or one or more class periods on that particular school day or as defined by the local school board in their truancy plan".

After lengthy discussion, it was determined there were too many changes to be handled during the time allotted. The decision was made that Representative Horst meet again with Staff and her sub-committee to work out the details of suggested amendments and appear again before the full committee on Thursday, February 8.

The hearing on HB 2023 was closed.

**HB 2094 - School districts, definition of juvenile detention facility for services and state grants.**

Dale Dennis of the Department of Education explained what the term "lock down" meant in regard to the schools and the different levels of confinement as labeled by the Juvenile Justice Authority under the direction of the Department of Health and Welfare.

The Chair asked that additional study be given to the various definitions and the hearing on **HB 2094** would resume on Thursday, February 8.

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for Thursday, February 8, 2001.

HOUSE BILL No. 2023

By Joint Committee on Corrections and Juvenile Justice Oversight

1-10

Subcommittee Report  
Representative Horst, Chair  
Representative DiVita  
Representative Crow  
2/2/01

House Education Committee

Date: 2/5/01

Attachment # 1-1

9 AN ACT concerning juveniles; relating to school attendance; amending  
10 K.S.A. ~~38-1502 and 38-1602~~ and K.S.A. 2000 Supp. 72-1113 and re-  
11 pealing the existing sections, ~~also repealing K.S.A. 38-1502.~~

38-1563

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

14 Section 1. K.S.A. 38-1502 is hereby amended to read as follows: 38-  
15 1502. As used in this code, unless the context otherwise indicates:

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

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

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

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

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

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

27 (6) *while less than 14 years of age*, is not attending school as required  
28 by K.S.A. 72-977 or 72-1111, and amendments thereto;

29 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)  
30 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-  
31 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-  
32 4204a and amendments thereto, does an act which, when committed by  
33 a person under 18 years of age, is prohibited by state law, city ordinance  
34 or county resolution but which is not prohibited when done by an adult;

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

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

40 (10) is willfully and voluntarily absent at least a second time from a  
41 court ordered or designated placement, or a placement pursuant to court  
42 order, if the absence is without the consent of the person with whom the  
43 child is placed or, if the child is placed in a facility, without the consent

1 of the person in charge of such facility or such person's designee;  
2 (11) has been residing in the same residence with a sibling or another  
3 person under 18 years of age, who has been physically, mentally or emo-  
4 tionally abused or neglected, or sexually abused; or  
5 (12) while less than 10 years of age commits the offense defined in  
6 K.S.A. 21-4204a and amendments thereto.  
7 (b) "Physical, mental or emotional abuse" means the infliction of  
8 physical, mental or emotional injury or the causing of a deterioration of  
9 a child and may include, but shall not be limited to, maltreatment or  
10 exploiting a child to the extent that the child's health or emotional well-  
11 being is endangered.  
12 (c) "Sexual abuse" means any act committed with a child which is  
13 described in article 35, chapter 21 of the Kansas Statutes Annotated and  
14 those acts described in K.S.A. 21-3602 or 21-3603, and amendments  
15 thereto, regardless of the age of the child.  
16 (d) "Parent," when used in relation to a child or children, includes a  
17 guardian, conservator and every person who is by law liable to maintain,  
18 care for or support the child.  
19 (e) "Interested party" means the state, the petitioner, the child, any  
20 parent, *any grandparent* and any person found to be an interested party  
21 pursuant to K.S.A. 38-1541 and amendments thereto.  
22 (f) "Law enforcement officer" means any person who by virtue of  
23 office or public employment is vested by law with a duty to maintain  
24 public order or to make arrests for crimes, whether that duty extends to  
25 all crimes or is limited to specific crimes.  
26 (g) "Youth residential facility" means any home, foster home or struc-  
27 ture which provides 24-hour-a-day care for children and which is licensed  
28 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.  
29 (h) "Shelter facility" means any public or private facility or home  
30 other than a juvenile detention facility that may be used in accordance  
31 with this code for the purpose of providing either temporary placement  
32 for the care of children in need of care prior to the issuance of a dispo-  
33 sitional order or longer term care under a dispositional order.  
34 (i) "Juvenile detention facility" means any secure public or private  
35 facility used for the lawful custody of accused or adjudicated juvenile  
36 offenders which must not be a jail.  
37 (j) "Adult correction facility" means any public or private facility, se-  
38 cure or nonsecure, which is used for the lawful custody of accused or  
39 convicted adult criminal offenders.  
40 (k) "Secure facility" means a facility which is operated or structured  
41 so as to ensure that all entrances and exits from the facility are under the  
42 exclusive control of the staff of the facility, whether or not the person  
43 being detained has freedom of movement within the perimeters of the

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1 facility, or which relies on locked rooms and buildings, fences or physical  
2 restraint in order to control behavior of its residents. No secure facility  
3 shall be in a city or county jail.

4 (l) "Ward of the court" means a child over whom the court has ac-  
5 quired jurisdiction by the filing of a petition pursuant to this code and  
6 who continues subject to that jurisdiction until the petition is dismissed  
7 or the child is discharged as provided in K.S.A. 38-1503 and amendments  
8 thereto.

9 (m) "Custody," whether temporary, protective or legal, means the  
10 status created by court order or statute which vests in a custodian,  
11 whether an individual or an agency, the right to physical possession of  
12 the child and the right to determine placement of the child, subject to  
13 restrictions placed by the court.

14 (n) "Placement" means the designation by the individual or agency  
15 having custody of where and with whom the child will live.

16 (o) "Secretary" means the secretary of social and rehabilitation  
17 services.

18 (p) "Relative" means a person related by blood, marriage or adoption  
19 but, when referring to a relative of a child's parent, does not include the  
20 child's other parent.

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

25 (r) "Multidisciplinary team" means a group of persons, appointed by  
26 the court or by the state department of social and rehabilitation services  
27 under K.S.A. 38-1523a and amendments thereto, which has knowledge  
28 of the circumstances of a child in need of care. A multidisciplinary team  
29 may serve as a community services team.

30 (s) "Jail" means:

31 (1) An adult jail or lockup; or

32 (2) a facility in the same building or on the same grounds as an adult  
33 jail or lockup, unless the facility meets all applicable standards and licen-  
34 sure requirements under law and there is (A) total separation of the ju-  
35 venile and adult facility spatial areas such that there could be no haphaz-  
36 ard or accidental contact between juvenile and adult residents in the  
37 respective facilities; (B) total separation in all juvenile and adult program  
38 activities within the facilities, including recreation, education, counseling,  
39 health care, dining, sleeping, and general living activities; and (C) separate  
40 juvenile and adult staff, including management, security staff and direct  
41 care staff such as recreational, educational and counseling.

42 (t) "Kinship care" means the placement of a child in the home of the  
43 child's relative or in the home of another adult with whom the child or

1 the child's parent already has a close emotional attachment.

2 (u) "Juvenile intake and assessment worker" means a responsible  
3 adult authorized to perform intake and assessment services as part of the  
4 intake and assessment system established pursuant to K.S.A. 75-7023, and  
5 amendments thereto.

6 (v) "Abandon" means to forsake, desert or cease providing care for  
7 the child without making appropriate provisions for substitute care.

8 (w) "Permanent guardianship" means a judicially created relationship  
9 between child and caretaker which is intended to be permanent and self-  
10 sustaining without ongoing state oversight or intervention by the secre-  
11 tary. The permanent guardian stands in loco parentis and exercises all the  
12 rights and responsibilities of a parent. A permanent guardian may be  
13 appointed after termination of parental rights or without termination of  
14 parental rights, if the parent consents and agrees to the appointment of  
15 a permanent guardian. Upon appointment of a permanent guardian, the  
16 child shall be discharged from the custody of the secretary.

17 (x) "Aggravated circumstances" means the abandonment, torture,  
18 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

19 (y) "Permanency hearing" means a notice and opportunity to be  
20 heard is provided to interested parties, foster parents, preadoptive parents  
21 or relatives providing care for the child. The court, after consideration of  
22 the evidence, shall determine whether progress toward the case plan goal  
23 is adequate or reintegration is a viable alternative, or if the case should  
24 be referred to the county or district attorney for filing of a petition to  
25 terminate parental rights or to appoint a permanent guardian.

26 (z) "Extended out of home placement" means a child has been in the  
27 custody of the secretary and placed with neither parent for 15 of the most  
28 recent 22 months beginning 60 days after the date at which a child in the  
29 custody of the secretary was removed from the home.

30 (aa) "Educational institution" means all schools at the elementary and  
31 secondary levels.

32 (bb) "Educator" means any administrator, teacher or other profes-  
33 sional or paraprofessional employee of an educational institution who has  
34 exposure to a pupil specified in subsection (a) of K.S.A. 2000 Supp. 72-  
35 89b03 and amendments thereto.

36 (cc) "Neglect" means acts or omissions by a parent, guardian or per-  
37 son responsible for the care of a child resulting in harm to a child or  
38 presenting a likelihood of harm and the acts or omissions are not due  
39 solely to the lack of financial means of the child's parents or other cus-  
40 todian. Neglect may include but shall not be limited to:

- 41 (1) Failure to provide the child with food, clothing or shelter neces-  
42 sary to sustain the life or health of the child;
- 43 (2) failure to provide adequate supervision of a child or to remove a

1 child from a situation which requires judgment or actions beyond the  
2 child's level of maturity, physical condition or mental abilities and that  
3 results in bodily injury or a likelihood of harm to the child; or

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

13 (dd) "Community services team" means a group of persons, ap-  
14 pointed by the court or by the state department of social and rehabilita-  
15 tion services for the purpose of assessing the needs of a child who is  
16 alleged to be a child in need of care.

17 Sec. 2. K.S.A. 38-1602 is hereby amended to read as follows: 38-  
18 1602. As used in this code, unless the context otherwise requires:

19 (a) "Juvenile" means a person 10 or more years of age but less than  
20 18 years of age.

21 (b) "Juvenile offender" means a person who commits an offense  
22 while a juvenile which if committed by an adult would constitute the  
23 commission of a felony or misdemeanor as defined by K.S.A. 21-3105,  
24 and amendments thereto, *who while 14 or more years of age during the*  
25 *dates of the unexcused absences, is not attending school, as required by*  
26 *K.S.A. 72-977 or 72-1111, and amendments thereto*, or who violates the  
27 provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A.  
28 74-8810, and amendments thereto, but does not include:

29 (1) A person 14 or more years of age who commits a traffic offense,  
30 as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

31 (2) a person 16 years of age or over who commits an offense defined  
32 in chapter 32 of the Kansas Statutes Annotated;

33 (3) a person under 18 years of age who previously has been:

34 (A) Convicted as an adult under the Kansas code of criminal  
35 procedure;

36 (B) sentenced as an adult under the Kansas code of criminal proce-  
37 dure following termination of status as an extended jurisdiction juvenile  
38 pursuant to K.S.A. 38-16,126, and amendments thereto; or

39 (C) convicted or sentenced as an adult in another state or foreign  
40 jurisdiction under substantially similar procedures described in K.S.A. 38-  
41 1636, and amendments thereto, or because of attaining the age of majority  
42 designated in that state or jurisdiction.

43 (c) "Parent," when used in relation to a juvenile or a juvenile of

1 tender, includes a guardian, conservator and every person who is by law  
2 liable to maintain, care for or support the juvenile.

3 (d) "Law enforcement officer" means any person who by virtue of  
4 that person's office or public employment is vested by law with a duty to  
5 maintain public order or to make arrests for crimes, whether that duty  
6 extends to all crimes or is limited to specific crimes.

7 (e) "Youth residential facility" means any home, foster home or struc-  
8 ture which provides twenty-four-hour-a-day care for juveniles and which  
9 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes  
10 Annotated.

11 (f) "Juvenile detention facility" means any secure public or private  
12 facility which is used for the lawful custody of accused or adjudicated  
13 juvenile offenders and which shall not be a jail.

14 (g) "Juvenile correctional facility" means a facility operated by the  
15 commissioner for juvenile offenders.

16 (h) "Warrant" means a written order by a judge of the court directed  
17 to any law enforcement officer commanding the officer to take into cus-  
18 tody the juvenile named or described therein.

19 (i) "Commissioner" means the commissioner of juvenile justice.

20 (j) "Jail" means:

21 (1) An adult jail or lockup; or

22 (2) a facility in the same building as an adult jail or lockup, unless the  
23 facility meets all applicable licensure requirements under law and there  
24 is (A) total separation of the juvenile and adult facility spatial areas such  
25 that there could be no haphazard or accidental contact between juvenile  
26 and adult residents in the respective facilities; (B) total separation in all  
27 juvenile and adult program activities within the facilities, including rec-  
28 reation, education, counseling, health care, dining, sleeping, and general  
29 living activities; and (C) separate juvenile and adult staff, including man-  
30 agement, security staff and direct care staff such as recreational, educa-  
31 tional and counseling.

32 (k) "Court-appointed special advocate" means a responsible adult,  
33 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-  
34 ments thereto, who is appointed by the court to represent the best inter-  
35 ests of a child as provided in K.S.A. 38-1606a, and amendments thereto,  
36 in a proceeding pursuant to this code.

37 (l) "Juvenile intake and assessment worker" means a responsible  
38 adult authorized to perform intake and assessment services as part of the  
39 intake and assessment system established pursuant to K.S.A. 75-7023, and  
40 amendments thereto.

41 (m) "Institution" means the following institutions: The Atchison ju-  
42 venile correctional facility, the Beloit juvenile correctional facility, the  
43 Larned juvenile correctional facility and the Topeka juvenile correctional

1 facility.

2 (n) "Sanctions house" means a facility which is operated or structured  
3 so as to ensure that all entrances and exits from the facility are under the  
4 exclusive control of the staff of the facility, whether or not the person  
5 being detained has freedom of movement within the perimeters of the  
6 facility, or which relies on locked rooms and buildings, fences, or physical  
7 restraint in order to control the behavior of its residents. Upon an order  
8 from the court, a licensed juvenile detention facility may serve as a sanc-  
9 tions house.

10 (o) "Sentencing risk assessment tool" means an instrument adminis-  
11 tered to juvenile offenders which delivers a score, or group of scores,  
12 describing, but not limited to describing, the juvenile's potential risk to  
13 the community.

14 (p) "Educational institution" means all schools at the elementary and  
15 secondary levels.

16 (q) "Educator" means any administrator, teacher or other profes-  
17 sional or paraprofessional employee of an educational institution who has  
18 exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A.  
19 2000 Supp. 72-89b03, and amendments thereto.

2] 20 Sec. [3], K.S.A. 2000 Supp. 72-1113 is hereby amended to read as  
21 follows: 72-1113. (a) Each board of education shall designate one or more  
22 employees who shall report to the secretary of social and rehabilitation  
23 services, or a designee thereof, or to the appropriate county or district  
24 attorney pursuant to an agreement as provided in this section, all cases  
25 of children who are less than 13 years of age and are not attending school  
26 as required by law, and to the appropriate county or district attorney, or  
27 a designee thereof, all cases of children who are 13 or more years of age  
28 but less than 18 years of age and are not attending school as required by  
29 law. The designation shall be made no later than September 1 of each  
30 school year and shall be certified no later than 10 days thereafter by the  
31 board of education to the secretary of social and rehabilitation services,  
32 or the designee thereof, to the county or district attorney, or the designee  
33 thereof, and to the commissioner of education. The commissioner of ed-  
34 ucation shall compile and maintain a list of the designated employees of  
35 each board of education. The local area office of the department of social  
36 and rehabilitation services may enter into an agreement with the appro-  
37 priate county or district attorney to provide that the designated employees  
38 of such board of education shall make the report as provided in this  
39 section for all cases of children who are less than 13 years of age and are  
40 not attending school as provided by law to the county or district attorney  
41 in lieu of the secretary, or the secretary's designee. If such agreement is  
42 made, the county or district attorney shall carry out all duties as otherwise  
43 provided by this subsection conferred on the secretary or the secretary's

Section 1. K.S.A. 38-1563 is hereby amended  
(See attached)



1 designee. A copy of such agreement shall be provided to the director of  
2 such area office of the department of social and rehabilitation services  
3 and to the school districts affected by the agreement.

4 (b) Whenever a child is required by law to attend school, and the  
5 child is not enrolled in a public or nonpublic school, the child shall be  
6 considered to be not attending school as required by law and a report  
7 thereof shall be made in accordance with the provisions of subsection (a)  
8 by a designated employee of the board of education of the school district  
9 in which the child resides. The provisions of this subsection are subject  
10 to the provisions of subsection (d).

11 (c) (1) Whenever a child is required by law to attend school and is  
12 enrolled in school, and the child is inexcusably absent therefrom on either  
13 three consecutive school days or five school days in any semester or seven  
14 school days in any school year, whichever of the foregoing occurs first,  
15 the child shall be considered to be not attending school as required by  
16 law. A child is inexcusably absent from school if the child is absent there-  
17 from all or a significant part of a school day without a valid excuse ac-  
18 ceptable to the school employee designated by the board of education to  
19 have responsibility for the school attendance of such child. As used in this  
20 section, "significant part of a school day" means an absence from 15% or  
21 more of classes scheduled for the child on that particular school day.

22 (2) Each board of education shall adopt rules for determination of  
23 valid excuse for absence from school ~~and for determination of what shall~~  
24 ~~constitute a "significant part of a school day" for the purpose of this~~  
25 ~~section.~~

26 (3) Each board of education shall designate one or more employees,  
27 who shall each be responsible for determining the acceptability and va-  
28 lidity of offered excuses for absence from school of specified children, so  
29 that a designee is responsible for making such determination for each  
30 child enrolled in school.

31 (4) Whenever a determination is made in accordance with the pro-  
32 visions of this subsection that a child is not attending school as required  
33 by law, the designated employee who is responsible for such determina-  
34 tion shall make a report thereof in accordance with the provisions of  
35 subsection (a).

36 (5) The provisions of this subsection are subject to the provisions of  
37 subsection (d).

38 (d) (1) Prior to making any report under this section that a child is  
39 not attending school as required by law, the designated employee of the  
40 board of education shall serve written notice thereof, by personal delivery  
41 or by first class mail, upon a parent or person acting as parent of the child.  
42 The notice shall inform the parent or person acting as parent that con-  
43 tinued failure of the child to attend school without a valid excuse will

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or more  
class period  
or as  
defined  
by

(6) Each board of education shall adopt a  
truancy plan. Such plan shall include a provision  
that the designated employee shall review the list of  
the private elementary or secondary school, <sup>as</sup>  
defined in K.S.A. 72-53,100, and amendments  
thereto, registered with the state board of education  
prior to designating a child as a truant. <sup>(Mason)</sup> ~~Each board~~ <sup>end here</sup>  
of education shall implement and enforce the plan  
with the goal of reducing truancy in such district by  
no less than 40%. <sup>200%</sup> ~~Annually~~ <sup>?</sup> such plan and truancy  
reduction figures shall be submitted to the state  
board of education. Subject to the provisions of  
appropriation acts, districts which achieve or exceed <sup>place</sup>  
this goal shall receive ~~bonus~~ <sup>grant</sup> moneys awarded by the  
state board of education. The state board of  
education shall adopt rules and regulations to  
establish procedures to make such awards. ~~Annually~~  
on or before February 1, the state board of education  
shall compile a report of truancy plans, statistics <sup>Lloyd</sup>  
regarding truancy reductions and moneys awarded <sup>amends</sup>  
~~pursuant to this section~~ and present such report to  
the [ option 1. joint committee on education  
review, {if adopted} or. option 2. standing house of  
representative and senate education committees ].

more  
explains

1 result in a report being made to the secretary of social and rehabilitation  
 2 services or to the county or district attorney. Upon failure, on the school  
 3 day next succeeding personal delivery of the notice or within three school  
 4 days after the notice was mailed, of attendance at school by the child or  
 5 of an acceptable response, as determined by the designated employee, to  
 6 the notice by a parent or person acting as parent of the child, the desig-  
 7 nated employee shall make a report thereof in accordance with the pro-  
 8 visions of subsection (a). The designated employee shall submit with the  
 9 report a certificate verifying the manner in which notice was provided to  
 10 the parent or person acting as parent.

11 (2) Whenever a law enforcement officer assumes temporary custody  
 12 of a child who is found away from home or school without a valid excuse  
 13 during the hours school is actually in session, and the law enforcement  
 14 officer delivers the child to the school in which the child is enrolled or to  
 15 a location designated by the school in which the child is enrolled to ad-  
 16 dress truancy issues, the designated employee of the board of education  
 17 shall serve notice thereof upon a parent or person acting as parent of the  
 18 child. The notice may be oral or written and shall inform the parent or  
 19 person acting as parent of the child that the child was absent from school  
 20 without a valid excuse and was delivered to school by a law enforcement  
 21 officer.

22 (e) Whenever the secretary of social and rehabilitation services re-  
 23 ceives a report required under this section, the secretary shall investigate  
 24 the matter. If, during the investigation, the secretary determines that the  
 25 reported child is not attending school as required by law, the secretary  
 26 shall institute proceedings under the code for care of children. If, during  
 27 the investigation, the secretary determines that a criminal prosecution  
 28 should be considered, the secretary shall make a report of the case to the  
 29 appropriate law enforcement agency.

30 (f) Whenever a county or district attorney receives a report required  
 31 under this section, the county or district attorney shall investigate the  
 32 matter. If, during the investigation, the county or district attorney deter-  
 33 mines that the reported child is not attending school as required by law,  
 34 the county or district attorney shall prepare and file a petition alleging  
 35 that the child is a child in need of care. If, during the investigation, the  
 36 county or district attorney determines that a criminal prosecution is nec-  
 37 essary, the county or district attorney shall commence such action.

38 (g) As used in this section, "board of education" means the board of  
 39 education of a school district or the governing authority of a nonpublic  
 40 school. The provisions of this act shall apply to both public and nonpublic  
 41 schools.

42 Sec. 4. K.S.A. [38-1502, 38-1502d and 38-1602] and K.S.A. 2000  
 43 Supp. 72-1113 are hereby repealed.

38-1563

1 Sec. 5. This act shall take effect and be in force from and after its  
2 publication in the statute book.

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

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

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

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

Unless the child is adjudicated to be a child in need of care pursuant to subsection (a) (6) of K.S.A. 38-1502, and amendments thereto,

to one of the following:

- (1) A relative of the child or a person with whom the child has close emotional ties;
- (2) any other suitable person;
- (3) a shelter facility; or
- (4) the secretary.

If the child is adjudged to be a child in need of care, the court shall not place the child in the custody of the secretary if the court has received from the secretary, written documentation of the services and/or community services plan offered or delivered to prevent the need for such custody unless the court finds that the services documented by the secretary are insufficient to protect the safety of the child and that being in the custody of the parent with such services in place is contrary to the welfare or that placement is in the best interests of the child. 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. The secretary shall present to the court in writing the specific actions taken to maintain the family unit and prevent the unnecessary removal of the child from the child's home.

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

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

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

(2) The secretary shall notify the court in writing of any placement of the child or, within days of the order awarding the custody of the child to the secretary, any proposed placement of

the child, whichever occurs first.

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

(4) When the secretary provides the court with a plan to provide services to a child or family which the court finds is in place and which will assure the safety of the child, the court shall approve the return of the child to the child's home. 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.

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

(g) If the court issues an order of custody pursuant to this section, 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, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness.

(h) 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

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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 reasonable efforts are not necessary because reintegration is not a viable alternative; or that an emergency exists which threatens the safety of the child and that allowing the child to remain in the home is contrary to the welfare of the child or that placement would be in the best interest of the child. If the child is placed in the custody of the secretary, the court shall provide the secretary with a copy of any orders entered for the purpose of documenting these orders within 10 days of making the order. Reintegration may not be a viable alternative when the: (1) Parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; (2) parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child as provided in subsection (h)(1); (3) parent committed a felony battery that resulted in bodily injury to the child or another child; (4) parent has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto; (5) parental rights of the parent to another child have been terminated involuntarily or (6) the child has been in extended out of home placement as defined in K.S.A. 38-1502, and amendments thereto. Such findings shall be included in any order entered by the court.

(i) In addition to or in lieu of any other order authorized by this section, if a child is adjudged to be a child in need of care by reason of a violation of the uniform controlled substances act (K.S.A. 65-4101 et seq., and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152, 65-4153, 65-4154 or 65-4155,

and amendments thereto, the court shall order the child to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary or the department of social and rehabilitation services.

(j) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is a ward of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-1595, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-1597, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be forced by any method allowed by law. Failure to provide this notice shall not affect the



validity of the child support order.

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(k) If a child is found to be a child in need of care pursuant to subsection (a)(6) of K.S.A. 38-1502, and amendments thereto, in addition to the dispositions authorized by subsection (a), (b) or (c), the court may:

- (1) place the child under a house arrest program administered by the court pursuant to K.S.A. 21-4603b, and amendments thereto;
- (2) order the child to participate in a program of education offered by a local board of education including placement in an alternative educational program approved by the local board of education;
- (3) suspend or restrict the child's driving privileges;
- (4) order the child or parents, or both, to participate in a tutoring program;
- (5) order the child or parent, or both, to pay a fine not to exceed \$250.