



**Kansas Association of  
Chiefs of Police**

PO Box 2163  
Hutchinson, KS 67504  
(620) 242-6565



**Kansas Sheriffs  
Association**

PO Box 1122  
Pittsburg, KS 66762  
(620) 687-1206



**Kansas Peace Officers  
Association**

PO Box 2592  
Wichita, KS 67201  
(316) 722-8433

**Testimony to the Joint Committee on Child Welfare System Oversight  
On Police Protective Custody Under the Child in Need of Care Act  
March 31, 2025**

Chair Gossage, Vice Chair Howerton and Committee Members,

We were asked to provide a presentation on police protective custody relating to the Code for Care of Children. This has recently become a key topic in child welfare reform discussions. It appears this has become an issue due to data showing what is considered a high number of police protective custody cases in Kansas as compared to other states. KSA 38-2231 is the primary statute on police protective custody, although that phrase is not found in statutes. Attached to this testimony are two relative statutes: K.S.A. 38-2231 and 38-2232. Also included is the revised K.S.A. 38-2231 we anticipate becoming law on July 1.

We do not take using police protective custody lightly. Our members tell us that other solutions are nearly always sought first. Taking a child into police protective custody can be traumatic not only for the child and family, but also to the officer. Our wish is that we never had occasion to use it. Our use of police protective custody comes only after efforts to eliminate child abuse and neglect have failed.

While we understand the data as presented, we have not seen supporting data that the numbers are founded on police protective custody being used when it was not justified **based on the information available to the officer at the time of the decision**. While a significant number of cases do not result in a court deciding to continue having the child removed from the home, it does not necessarily convert to inappropriate use of police protective custody at the time of the law enforcement action. For example,

1. Law enforcement is often taking police protective custody action outside of normal business hours when other services or options are not readily available, nor are the services of the Department for Children and Families. Many times, the removal of the child is based on immediate conditions that can be remedied in a short time, even prior to court interaction, but not available to the officer when the police protective custody decision was made. When given adequate time and resources the neglect conditions can be addressed or improved. Those are not often available at the time law enforcement encounters the condition. With more information available to the court, other temporary solutions may be available that were not available to law enforcement. A portion of this type of information may also be available to DCF that is not available to law enforcement.
2. DCF is only available 8-5 Monday through Friday. This results in law enforcement being the primary responders to these complaints 74% of the time. We have learned some other states provide their DCF equivalent to respond outside normal business hours.

3. During regular law enforcement duties, we frequently discover cases of neglect. Since DCF is not typically available for immediate response, even during normal business hours, it is left to law enforcement to act if the officer “reasonably believes the child will be harmed if not immediately removed from the place or residence where the child is found.” This is not always at the home nor is it always in the presence of the parent or guardian.
4. Police protective custody of a child may also be necessary if the parent(s) or caregiver is arrested and no alternative exists for care of the child.
5. Police protective custody may be of short duration. If the occurrence is not at the home or the parent is not readily available, police protective custody may be used until arrangements can be made to return the child to the parent or guardian as provided in KSA 38-2232.
6. When we speak with our members about this issue it always involves frustration with neglect cases being referred to law enforcement for police protective custody instead of DCF obtaining an ex parte order. This appears to happen on a regular basis many times with a case referral on Friday afternoon. At least some of those cases have been in DCF hands for days, according to the reports we get from our members. I have no data I can offer to support the frequency of this, but we get these reports from our members across the state on a regular basis.

We would welcome solutions that would engage DCF more when cases arise outside normal DCF business hours and eliminate neglect case referrals from DCF when there are no criminal elements to the complaint or other factors requiring immediate law enforcement action.

As you can see in the statutes, police protective custody in these cases is based on the investigation causing the officer to “reasonably believe the child will be harmed if not immediately removed from the place or residence where the child has been found.”

### **Reasonable Belief**

Reasonable belief is not defined in statute. However, it is a common basis for enforcement or investigative action in the criminal justice process. It is contained in at least 22 state statutes. Reasonable belief is well established in case law, although it is generally based on case specific facts. It is considered an objective standard of what a reasonable person with a similar background and in the same situation would believe based on factual and articulable evidence, observations, and circumstances known at the time.

It is the same standard a law enforcement officer uses to take a person into police protective custody under the “care and treatment act for mentally ill persons;” (K.S.A. 59-2953) and the “Care and Treatment for Persons with an Alcohol or Substance Abuse Problem Act;” (K.S.A. 59-29b53). It is also the standard allowing an officer to “detain” a person without an arrest for investigation who the officer reasonably suspects is committing, has committed, or is about to commit a crime. (K.S.A. 22-2402)

We do not believe these standards are inappropriate or difficult for law enforcement to properly apply in decisions regarding police protective custody of a child at risk of harm from abuse or neglect.

### **Law Enforcement Discretion**

In many areas of our work, law enforcement has limited discretion in the action taken to resolve or address a given situation, as do prosecutors and courts. Police Protective Custody

under the Child in Need of Care Act is one of those areas where discretion is narrowed. We believe this is appropriate when protecting children from harm when the reasonable belief standard is met.

While current law does not specifically provide using other options to separate the child and the source of potential harm, we find this is the typical practice across the state. The amended statute will include this in the statutory framework in a way that does not increase liability to the officers and their agencies. We believe this provides the proper guidance to officers to use limited discretion to avoid the trauma of removing the child from the home to a foster care setting. The additional provision in the revised statute assures DCF and, if necessary the courts, can promptly take a deeper look into the situation and provide other resources to aid the family in restoring a safe environment for their child while minimizing state custody of the child.

### **Neglect, Abuse or Abandonment Allegations**

Neglect, abuse, or abandonment are the allegations that lead to police protective custody where a child is removed from their home or other place of care.

Neglect is defined in K.S.A. 38-2202 subsection (z) as “acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child’s parents or other custodian. Neglect may include, but shall not be limited to:

- (1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;
- (2) failure to provide adequate supervision of a child or to remove a child from a situation that requires judgment or actions beyond the child’s level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or
- (3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to K.S.A. 2014 Supp. 38-2217(a)(2), and amendments thereto.”

Abuse is defined in K.S.A. 38-2202 subsections (ee) and (mm):

(ee) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child’s health or emotional well-being is endangered.

(mm) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include, but is not limited to, allowing, permitting or encouraging a child to:

- (1) Be photographed, filmed or depicted in pornographic material.

- (2) be subjected to aggravated human trafficking, as defined in K.S.A. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the offender or another or be subjected to an act that would constitute conduct proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 21-6419 or 21-6422, and amendments thereto.

Abandonment is defined in K.S.A. 38-2202 subsection (a):

- (a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

Abuse cases always have a criminal element and require law enforcement investigation.

Neglect or abandonment cases may have a criminal element but frequently do not.

### **Law Enforcement Challenges**

As you can see in the previous pages of overview of the applicable statutes and how law enforcement is required to apply them, these are complex investigations that rarely can be finalized in short order and will require additional investigation by law enforcement and DCF. Law enforcement is charged with determining if there is articulable reason to believe “the child will be harmed if not immediately removed from the place or residence where the child has been found.” [K.S.A. 38-2231 subsection (b)(1)] Evaluations of the law enforcement officer’s decision must be based on the information the officer has at the time the decision is made whether to take the child into police protective custody. It would be unusual for additional information not to be available from later investigation. For example, when these decisions are made when DCF is not available, more information may become available about past allegations and investigations. Or additional information may be obtained from schools, day care providers, relatives, or other witnesses not available at the time the initial police protective custody decision was made. That additional information may confirm or mitigate the concerns. It would require a deep dive into the data and the individual case to evaluate whether the officer’s decision was appropriate.

In some cases, the law enforcement contact is at a location that is not the child’s home. Sometimes the perpetrator of the harm is a parent or other resident of the child’s home and in others it is a person who is not a resident of the child’s home or a condition that does not exist at the child’s home. Those cases involve consideration of the risk when the child returns home with family, and in many cases do not warrant police protective custody.

Police protective custody is designed to lean toward the safety of the child. But as law enforcement makes their assessment of the level of risk of harm, we also are aware of the potential emotional and psychological impacts on the family and the child if the child is removed from the home. Still, we are obligated by the statute to take the child into police protective custody if there is reason to believe the child will be harmed if not removed and we cannot find another way to alleviate that reasonable belief the child will be harmed.

It is our opinion that changing the statutory requirement to raise the bar to take the child into protective custody should not be made. We believe doing so would jeopardize the safety of the child and tip the balance from the child’s safety toward leaving the child in the home with potential risk of harm to the child.

### **Points to Ponder**

There are things that could be considered for improving the law enforcement ability to evaluate the risk level of potential harm to the child.

- **Risk Assessment Tool:** We are not aware of any Risk Assessment Tool for law enforcement when making the police protective custody decision based on a reason to believe the child will not be safe if left in their home. If one exists, and has been validated, we should consider if it would work under Kansas law.
  - If such a tool is not available, perhaps we should explore developing one. The tool would have to be validated for effectiveness in protecting the child and the lack of bias as applied in the circumstances of a law enforcement field officer.
  - The tool should be aimed at the decision of whether removal from the child's home is appropriate with the available information. It probably would be difficult and not necessary to have a tool for removing the child from a secondary location when returning the child to their home is appropriate when no indication of further risk of harm exists in their home.
  - Just because a tool is available for use by the courts or by DCF, does not mean it would be applicable to the law enforcement role. DCF and the courts will have access to more information and additional time for further investigation than the officer has, especially when law enforcement is making the determination after normal business hours.
- **Data Analysis:** If there is concern about the number of removals from the home by law enforcement, there should be a deep dive into the available data on why that occurs. Change should not be based solely on the number, but instead on the quality of the decisions **based on the knowledge of the officer at the time of the decision, not on knowledge gained later by DCF or the courts.** The analysis must also attempt to identify a pattern of circumstances when a removal from the home is later thought to be unnecessary. Identification of these patterns can then be used to improve training or change factors leading to those questioned decisions.
- **Law Enforcement ability to contact DCF experts after business hours:** Explore potential improvements for law enforcement to contact DCF professionals to provide the officer with more information during non-business hours as the police protective custody decision is being made. This is especially important if a call to the DCF Call Center reveals prior allegations, current investigations, or if the child is already in DCF custody. The DCF case worker can also add valuable insight into possible temporary placement options, and more importantly, poor choices for temporary placement options. This contact can be very helpful in a law enforcement jurisdiction that doesn't have specialized juvenile investigators and/or rarely have a police protective custody case involving abuse, neglect or abandonment.
- **Training:** Assure we have up-to-date online training opportunities for law enforcement through the Kansas Law Enforcement Training Center. This type of training can be effective and can reach a larger group of law enforcement officers. This training must be developed jointly with law enforcement and DCF.

Ed Klumpp  
 Legislative Liaison  
 eklumpp@cox.net

38-2231. Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway.

(a) A law enforcement officer or court services officer shall take a child under 18 years of age into custody when:

- (1) The law enforcement officer or court services officer has a court order commanding that the child be taken into custody as a child in need of care; or
- (2) the law enforcement officer or court services officer has probable cause to believe that a court order commanding that the child be taken into custody as a child in need of care has been issued in this state or in another jurisdiction.

(b) A law enforcement officer shall take a child under 18 years of age into custody when the officer:

- (1) Reasonably believes the child will be harmed if not immediately removed from the place or residence where the child has been found;
- (2) has probable cause to believe that the child is a runaway or a missing person or a verified missing person entry for the child can be found in the national crime information center missing person system;
- (3) reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; or
- (4) reasonably believes the child is experiencing a behavioral health crisis and is likely to cause harm to self or others.

(c) (1) If a person provides shelter to a child whom the person knows is a runaway, such person shall promptly report the child's location either to a law enforcement agency or to the child's parent or other custodian.

(2) If a person reports a runaway's location to a law enforcement agency pursuant to this section and a law enforcement officer of the agency has reasonable grounds to believe that it is in the child's best interests, the child may be allowed to remain in the place where shelter is being provided, subject to subsection (b), in the absence of a court order to the contrary. If the child is allowed to so remain, the law enforcement agency shall promptly notify the secretary of the child's location and circumstances.

(d) Except as provided in subsections (a) and (b), a law enforcement officer may temporarily detain and assume temporary custody of any child subject to compulsory school attendance, pursuant to K.S.A. [72-3120](#), and amendments thereto, during the hours school is actually in session and shall deliver the child pursuant to K.S.A. [38-2232\(g\)](#), and amendments thereto.

K.S.A. 38-2231 as amended by HB2025 passed Senate 38-0 and House 123-0, pending action by Governor. New provisions in bold.

(a) A law enforcement officer or court services officer shall take a child under 18 years of age into custody when:

- (1) The law enforcement officer or court services officer has a court order commanding that the child be taken into custody as a child in need of care; or
- (2) the law enforcement officer or court services officer has probable cause to believe that a court order commanding that the child be taken into custody as a child in need of care has been issued in this state or in another jurisdiction.

(b) A law enforcement officer shall take a child under 18 years of age into custody when the officer:

- (1) Reasonably believes the child will be harmed if not immediately removed from the place or residence where the child has been found; or

(2) reasonably believes the child is experiencing a behavioral health crisis and is likely to cause harm to self or others.

**(c) A law enforcement officer shall explore other options to separate the child from the source of harm before removal of such child as provided in subsection (b).**

**(d) The secretary shall provide an electronic means of communication for a responding law enforcement officer to refer a child who may be a victim of abuse or neglect to the secretary. The secretary shall receive such referrals and, within 24 hours, initiate an investigation of abuse or neglect and contact the persons who are the subject of such investigation. Then, within 24 hours of such contact, the secretary shall respond to the referring law enforcement agency with the status of the investigation.**

(e) A law enforcement officer shall take a child under 18 years of age into custody when the officer:

(1) Has probable cause to believe that the child is a runaway or a missing person or a verified missing person entry for the child can be found in the national crime information center missing person system; or

(2) reasonably believes that the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.

(f) (1) If a person provides shelter to a child whom the person knows is a runaway, such person shall promptly report the child's location either to a law enforcement agency or to the child's parent or other custodian.

(2) If a person reports a runaway's location to a law enforcement agency pursuant to this section and a law enforcement officer of the agency has reasonable grounds to believe that it is in the child's best interests, the child may be allowed to remain in the place where shelter is being provided, subject to subsection (b) (e), in the absence of a court order to the contrary. If the child is allowed to so remain, the law enforcement agency shall promptly notify the secretary of the child's location and circumstances.

(g) Except as provided in subsections (a), (b) and (e), a law enforcement officer may temporarily detain and assume temporary custody of any child subject to compulsory school attendance, pursuant to K.S.A. 72-3120, and amendments thereto, during the hours school is actually in session and shall deliver the child pursuant to K.S.A. 38-2232(g), and amendments thereto.

38-2232. Child under 18 taken into custody; duties of officers; referral of cases for proceedings under this code and interstate compact on juveniles; placed in shelter facility or with other person;

application of law enforcement officer; release of child. (a) (1) To the extent possible, when any law enforcement officer takes into custody a child under the age of 18 years without a court order, the child shall promptly be delivered to the custody of the child's parent or other custodian unless there are reasonable grounds to believe that such action would not be in the best interests of the child.

(2) Except as provided in subsection (b), if the child is not delivered to the custody of the child's parent or other custodian, the child shall promptly be delivered to a:

(A) (i) Shelter facility designated by the court;

(ii) court services officer;

(iii) juvenile intake and assessment worker;

(iv) licensed attendant care center;

(v) juvenile crisis intervention center after written authorization by a community mental health center; or

(vi) other person;

(B) if the child is 15 years of age or younger, to a facility or person designated by the secretary; or  
(C) if the child is 16 or 17 years of age and the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to a facility or person designated by the secretary.

(3) If, after delivery of the child to a shelter facility, the person in charge of the shelter facility at that time and the law enforcement officer determine that the child will not remain in the shelter facility and if the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to K.S.A. [38-2202](#)(d)(9) or (d)(10), and amendments thereto, the law enforcement officer shall deliver the child to a secure facility, designated by the court, where the child shall be detained for not more than 24 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible.

(4) No child taken into custody pursuant to this code shall be placed in a secure facility, except as authorized by this section and by K.S.A. [38-2242](#), [38-2243](#) and [38-2260](#), and amendments thereto.

(5) It shall be the duty of the law enforcement officer to furnish to the county or district attorney, without unnecessary delay, all the information in the possession of the officer pertaining to the child, the child's parents or other persons interested in or likely to be interested in the child and all other facts and circumstances which caused the child to be taken into custody.

(b) (1) When any law enforcement officer takes into custody any child as provided in K.S.A. [38-2231](#)(b)(2), and amendments thereto, proceedings shall be initiated in accordance with the provisions of the interstate compact on juveniles, K.S.A. [38-1001](#) et seq., and amendments thereto, or K.S.A. [38-1008](#), and amendments thereto, when effective. Any child taken into custody pursuant to the interstate compact on juveniles may be detained in a juvenile detention facility or other secure facility.

(2) When any law enforcement officer takes into custody any child as provided in K.S.A. [38-2231](#)(b)(3), and amendments thereto, the law enforcement officer shall place the child in protective custody and may deliver the child to a staff secure facility. The law enforcement officer shall contact the department for children and families to begin an assessment to determine safety, placement and treatment needs for the child. Such child shall not be placed in a secure facility, except as authorized by this section and by K.S.A. [38-2242](#), [38-2243](#) and [38-2260](#), and amendments thereto.

(3) When any law enforcement officer takes into custody any child as provided in K.S.A. [38-2231](#)(b)(4), and amendments thereto, the law enforcement officer shall place the child in protective custody and may deliver the child to a juvenile crisis intervention center after written authorization by a community mental health center. Such child shall not be placed in a juvenile detention facility or other secure facility.

(c) Whenever a child under the age of 18 years is taken into custody by a law enforcement officer without a court order and is thereafter placed as authorized by subsection (a), the facility or person shall, upon written application of the law enforcement officer, have physical custody and provide care and supervision for the child. The application shall state:

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

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

(3) the officer's belief that the child is a child in need of care and that there are reasonable grounds to believe that the circumstances or condition of the child is such that the child would be harmed unless placed in the immediate custody of the shelter facility or other person.



(d) A copy of the application shall be furnished by the facility or person receiving the child to the county or district attorney without unnecessary delay.

(e) The shelter facility or other person designated by the court who has custody of the child pursuant to this section shall discharge the child not later than 72 hours following admission, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, unless a court has entered an order pertaining to temporary custody or release.

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

(g) When any law enforcement officer takes into custody any child as provided in K.S.A. [38-2231](#)(d), and amendments thereto, the child shall promptly be delivered to the school in which the child is enrolled, any location designated by the school in which the child is enrolled or the child's parent or other custodian.