

SUBSTITUTE FOR SENATE BILL No. 81

By Committee on Judiciary

3-9

1 AN ACT concerning children and minors; relating to temporary custody;
2 permanency planning; adoption; amending K.S.A. 2010 Supp. 38-2243,
3 38-2263 and 38-2270 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2010 Supp. 38-2243 is hereby amended to read as
7 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
8 order directing who shall have temporary custody and may modify the
9 order during the pendency of the proceedings as will best serve the child's
10 welfare.

11 (b) A hearing pursuant to this section shall be held within 72 hours,
12 excluding Saturdays, Sundays, legal holidays; and days on which the office
13 of the clerk of the court is not accessible, following a child having been
14 taken into protective custody.

15 (c) Whenever it is determined that a temporary custody hearing is
16 required, the court shall immediately set the time and place for the hearing.
17 Notice of a temporary custody hearing shall be given to all parties and
18 interested parties. *Reasonable efforts shall also be made to notify any*
19 *known first degree relatives of the child or any known person who has*
20 *close emotional ties with the child.*

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

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

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

1 (g) (1) Whenever the court determines the necessity for an order of
2 temporary custody, the court may place the child in the temporary custody
3 of:

4 (A) A parent or other person having custody of the child and may
5 enter a restraining order pursuant to subsection (h);

6 (B) a person, other than the parent or other person having custody,
7 who shall not be required to be licensed under article 5 of chapter 65 of the
8 Kansas Statutes Annotated, and amendments thereto;

9 (C) a youth residential facility;

10 (D) a shelter facility; or

11 (E) the secretary, if the child is 15 years of age or younger, or 16 or
12 17 years of age if the child has no identifiable parental or family resources
13 or shows signs of physical, mental, emotional or sexual abuse.

14 (2) If the secretary presents the court with a plan to provide services
15 to a child or family which the court finds will assure the safety of the
16 child, the court may only place the child in the temporary custody of the
17 secretary until the court finds the services are in place. The court shall
18 have the authority to require any person or entity agreeing to participate in
19 the plan to perform as set out in the plan. When the child is placed in the
20 temporary custody of the secretary, the secretary shall have the
21 discretionary authority to place the child with a parent or to make other
22 suitable placement for the child. When the child is presently alleged, but
23 not yet adjudicated to be a child in need of care solely pursuant to
24 subsection (d)(9) or (d)(10) of K.S.A. 2010 Supp. 38-2202, and
25 amendments thereto, the child may be placed in a juvenile detention
26 facility or other secure facility, but the total amount of time that the child
27 may be held in such facility under this section and K.S.A. 2010 Supp. 38-
28 2242, and amendments thereto, shall not exceed 24 hours, excluding
29 Saturdays, Sundays, legal holidays; and days on which the office of the
30 clerk of the court is not accessible. The order of temporary custody shall
31 remain in effect until modified or rescinded by the court or an adjudication
32 order is entered but not exceeding 60 days, unless good cause is shown
33 and stated on the record.

34 (h) If the court issues an order of temporary custody, the court may
35 also enter an order restraining any alleged perpetrator of physical, sexual,
36 mental or emotional abuse of the child from residing in the child's home;
37 visiting, contacting, harassing or intimidating the child; or attempting to
38 visit, contact, harass or intimidate the child, other family members or
39 witnesses. Such restraining order shall be served by personal service
40 pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and amendments
41 thereto, on any alleged perpetrator to whom the order is directed.

42 (i) (1) The court shall not enter the initial order removing a child from
43 the custody of a parent pursuant to this section unless the court first finds

1 probable cause that: (A)(i) the child is likely to sustain harm if not
2 immediately removed from the home;

3 (ii) allowing the child to remain in home is contrary to the welfare of
4 the child; or

5 (iii) immediate placement of the child is in the best interest of the
6 child; and

7 (B) reasonable efforts have been made to maintain the family unit and
8 prevent the unnecessary removal of the child from the child's home or that
9 an emergency exists which threatens the safety to the child.

10 (2) Such findings shall be included in any order entered by the court.
11 If the child is placed in the custody of the secretary, upon making the order
12 the court shall provide the secretary with a written copy.

13 (j) If the court enters an order of temporary custody that provides for
14 placement of the child with a person other than the parent, the court shall
15 make a child support determination pursuant to K.S.A. 2010 Supp. 38-
16 2277, and amendments thereto.

17 (k) *At the time of the temporary custody hearing, the judge shall*
18 *order the parent or guardian of the child to state the names of and provide*
19 *to the secretary any available contact information for any known family*
20 *members of the child and any persons with whom the child has close*
21 *emotional ties. The parent or guardian shall also be ordered to state if*
22 *such parent or guardian, or any other family member, has American*
23 *Indian affiliation.*

24 Sec. 2. K.S.A. 2010 Supp. 38-2263 is hereby amended to read as
25 follows: 38-2263. (a) The goal of permanency planning is to assure, in so
26 far as is possible, that children have permanency and stability in their
27 living situations and that the continuity of family relationships and
28 connections is preserved. In planning for permanency, the safety and well
29 being of children shall be paramount.

30 (b) Whenever a child is subject to the jurisdiction of the court
31 pursuant to the code, an initial permanency plan shall be developed for the
32 child and submitted to the court within 30 days of the initial order of the
33 court. If the child is in the custody of the secretary, or the secretary is
34 providing services to the child, the secretary shall prepare the plan.
35 Otherwise, the plan shall be prepared by the person who has custody or, if
36 directed by the court, by a court services officer.

37 (c) A permanency plan is a written document prepared, where
38 possible, in consultation with the child's parents and which:

39 (1) Describes the permanency goal which, if achieved, will most
40 likely give the child a permanent and safe living arrangement;

41 (2) describes the child's level of physical health, mental and
42 emotional health, and educational functioning;

43 (3) provides an assessment of the needs of the child and family;

1 (4) describes the services to be provided the child, the child's parents
2 and the child's foster parents, if appropriate;

3 (5) includes a description of the tasks and responsibilities designed to
4 achieve the plan and to whom assigned; and

5 (6) includes measurable objectives and time schedules for achieving
6 the plan.

7 (d) In addition to the requirements of subsection (c), if the child is in
8 an out of home placement, the permanency plan shall include:

9 (1) A plan for reintegration of the child's parent or parents or if
10 reintegration is determined not to be a viable alternative, a statement for
11 the basis of that conclusion and a plan for another permanent living
12 arrangement;

13 (2) a description of the available placement alternatives, *including the*
14 *names of all relatives with whom placement alternatives have been*
15 *considered*;

16 (3) a justification for the placement selected, including a description
17 of the safety and appropriateness of the placement. *If placement with a*
18 *relative is not selected, the reason that relative placement alternative was*
19 *not selected shall be documented*; and

20 (4) a description of the programs and services which will help the
21 child prepare to live independently as an adult.

22 (e) If there is a lack of agreement among persons necessary for the
23 success of the permanency plan, the person or entity having custody of the
24 child shall notify the court which shall set a hearing on the plan.

25 (f) A permanency plan may be amended at any time upon agreement
26 of the plan participants. If a permanency plan requires amendment which
27 changes the permanency goal, the person or entity having custody of the
28 child shall notify the court which shall set a permanency hearing pursuant
29 to K.S.A. 2010 Supp. 38-2264 and 38-2265, and amendments thereto.

30 Sec. 3. K.S.A. 2010 Supp. 38-2270 is hereby amended to read as
31 follows: 38-2270. (a) When parental rights have been terminated and it
32 appears that adoption is a viable alternative, the court shall enter one of the
33 following orders:

34 (1) An order granting custody of the child, for adoption proceedings,
35 to the secretary or a corporation organized under the laws of the state of
36 Kansas authorized to care for and surrender children for adoption as
37 provided in K.S.A. 38-112 et seq., and amendments thereto. The person,
38 secretary or corporation shall have authority to place the child in a family
39 home, and give consent for the legal adoption of the child which shall be
40 the only consent required to authorize the entry of an order or decree of
41 adoption.

42 (2) An order granting custody of the child to proposed adoptive
43 parents and consenting to the adoption of the child by the proposed

1 adoptive parents.

2 (b) In making an order under subsection (a), the court shall give
3 preference, to the extent that the court finds it is in the best interests of the
4 child, first to granting such custody for adoption to a relative of the child
5 ~~and second to granting such custody.~~ *If the court determines that no viable*
6 *relative placement exists, then the court shall give preference, to the extent*
7 *that the court finds it is in the best interests of the child, to granting such*
8 *custody for adoption to a person with whom the child has close emotional*
9 ties.

10 (c) *Discharge upon adoption.* When an adoption decree has been filed
11 with the court in the child in need of care case, the secretary's custody shall
12 cease, the court's jurisdiction over the child shall cease and the court shall
13 enter an order to that effect.

14 Sec. 4. K.S.A. 2010 Supp. 38-2243, 38-2263 and 38-2270 are hereby
15 repealed.

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