{As Amended by Senate Committee of the Whole}

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Session of 2015

SENATE BILL No. 159

By Committee on Judiciary

2-5

SB159-Balloon-DCF
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Office of Revisor of Statutes
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AN ACT concerning ~~the revised Kansas code for care of~~ children; *{enacting the safe families act;}* relating to when law enforcement officers shall take a child into custody; amending K.S.A. 2014 Supp. 38-2231 and repealing the existing section.

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

{New Section 1. Sections 1 through 6, and amendments thereto, shall be known and may be cited as the safe families act.

New Sec. 2. As used in the safe families act:

(a) "Attorney in fact" shall have the same meaning as defined in K.S.A. 58-651, and amendments thereto.

(b) "Serving parent" means a parent who is a member of the reserves of the army, navy, air force, marine corps or coast guard of the United States or the commissioned corps of the national oceanic and atmospheric administration or the public health service of the United States department of health and human services detailed by proper authority for duty with the army or navy of the United States, or who is required to enter or serve in the active military service of the United States under a call or order of the president of the United States or to serve on state active duty.

New Sec. 3. (a) A parent or legal custodian of a child may by a properly executed power of attorney provided in section 4, and amendments thereto, delegate to another person known as the attorney in fact, for a period not to exceed one year, except as provided in subsection (f), any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. A delegation of powers under this section shall not deprive the parent or legal custodian of any parental or legal authority regarding the care and custody of the child.

(1)

(2) (A) Except as provided further, if a child is in the joint legal custody of more than one parent, a power of attorney authorized by this section shall not be effective unless both parents having such joint legal custody execute one power of attorney document.

(B) If such parents to not have shared residential custody and the parent who has residential custody has had no contact with the non-residential custodial parent within the previous six months prior to the execution of the power of attorney authorized by this section, the residential custodial parent shall make reasonable efforts to obtain the non-residential custodial parent's signature on the power of attorney. If the residential custodial parent is unable to obtain the non-residential custodial parent's signature on the power of attorney, the residential custodial parent shall sign a sworn affidavit as to the reasonable efforts such parent undertook to obtain the non-residential custodial parent's signature and such sworn affidavit shall be substituted for the non-residential custodial parent's signature.

(b) The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by subsection (a) at any time. Except as provided in subsection (f), if the delegation of authority lasts longer than one year, the parent or legal

custodian of the child shall execute a new power of attorney for each additional year that the delegation exists. If a parent withdraws or revokes the power of attorney the child shall be returned to the custody of the parents as soon as reasonably possible.

(c) Unless the authority is revoked or withdrawn by the parent the attorney in fact shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney authorized by subsection (a) and shall not be subject to any laws or rules or regulations dealing with the licensing or regulation of foster care homes.

(d) Except as otherwise provided by law, the execution of a power of attorney by a parent or legal custodian, as authorized in subsection (a), shall not constitute abandonment, abuse or neglect as defined in K.S.A. 38-2202, and amendments thereto, unless the parent or legal custodian fails to take custody of the child or execute a new power of attorney after the one-year time limit has elapsed.

(e) Under a delegation of powers as authorized by subsection (a), the child or children subject to the power of attorney shall not be considered as placed in foster care and the parties shall not be subject to any of the requirements or licensing laws, rules or regulations for foster care or other regulations relating to community care for children.

(f) A serving parent may delegate the power designated in subsection (a) for a period longer than one year if on active duty service. The term of delegation, however, may not exceed the term of active duty service plus 30 days.

New Sec. 4. ~~*(a) The following statutory form of power of attorney to delegate parental or legal authority as authorized by section 3, and amendments thereto, is legally sufficient:*~~

Strike in lines 26-43

~~*Statutory Form for Power of Attorney to Delegate Parental or Legal Custodian Powers*~~

~~*1. "I certify that I am the parent or legal custodian of:*~~

~~*(Full name of minor child)* *(Date of birth)*~~

~~*(Full name of minor child)* *(Date of birth)*~~

~~*(Full name of minor child)* *(Date of birth)"*~~

~~*2. "I designate*~~

~~*(Full name of Attorney in fact),*~~

~~*(Street address, city, state and zip code of Attorney in fact)*~~

~~*(Home phone of Attorney in fact)* *(Work phone of Attorney in fact)*~~

Strike all on this page

~~as the attorney in fact of each minor child named above."~~

~~3. "I delegate to the attorney in fact all of my power and authority regarding the care, custody and property of each minor child named above, including, but not limited to, the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child." or~~

~~4. "I delegate to the attorney in fact the following specific powers and responsibilities (write in): _____~~

~~(In the event paragraph 4 is completed paragraph 3 does not apply).~~

~~This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."~~

~~5. "This power of attorney is effective for a period not to exceed one year, beginning _____, 20__, and ending _____, 20__. I reserve the right to revoke this authority at any time."~~

~~6. "I am a serving parent as defined in the safe families act. My active duty is estimated to be completed on _____. I acknowledge that in no event may this delegation of power last more than one year or the term on my active duty plus 30 days, whichever is longer.~~

~~By: _____~~

~~(Parent/Legal Custodian signature)"~~

~~7. "I hereby accept my designation as attorney in fact for~~

~~_____~~

~~(Minor child(ren)) as specified in this power of attorney.~~

~~_____~~

~~(Attorney in fact signature)~~

~~State of _____~~

~~County of _____~~

~~ACKNOWLEDGMENT~~

~~Before me, the undersigned, a Notary Public, in and for _____ County and this State on this ____ day of _____, 20____, personally appeared _____ (Name of Parent/Legal Custodian) and _____ (Name of Attorney in fact), to me known to be the identical persons who~~

~~*executed this instrument and acknowledged to me that each executed the same of such person's free and voluntary act and deed for the uses and purposes set forth in the instrument.*~~

~~*Witness my hand and official seal the day and year above written.*~~

~~*(Signature of notarial officer)* *(Seal, if any)*~~

~~*(Title and Rank)*~~

~~*My commission expires:*~~ ~~"~~

(b) The power of attorney is legally sufficient under the safe families act, if the wording of the form complies substantially with subsection (a), the form is properly completed and the signatures of the parties are acknowledged.

New Sec. 5. During any child protective investigation by the Kansas department for children and families that does not result in an out-of-home placement resulting from abuse of a child, ~~a child protective investigator~~ shall provide information to the parent or custodians who are under financial distress, unemployed, homeless or experiencing other family crises about community service programs that provide respite care, voluntary guardianship, other support services for families in crisis, including churches and other organizations that work with safe families for children, and the safe families act.

New Sec. 6. Any attorney in fact delegated authority under the safe families act by a parent or legal custodian is not subject to the requirements of any other child care facility licensing statutes, rules or regulations or foster care licensing laws or rules or regulations, and will not constitute an out-of-home child placement under the ~~child in need of care code~~, K.S.A. 38-2201 et seq., and amendments thereto.

New Sec. 7. The Kansas department for children and families is hereby authorized to work with families who are in financial distress, unemployed, homeless or experiencing other family crises by detailing community resources available to such families in the community, including, but not limited to, respite care, voluntary guardianship under the safe families act and information regarding churches and other organizations that work as host families for safe families for children in the state.}

~~Section 1.~~ *{Sec. 8.}* K.S.A. 2014 Supp. 38-2231 is hereby amended to read as follows: 38-2231. (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

(a) The Kansas judicial council shall create a form of power of attorney to delegate parental or legal authority consistent with the requirements of section 3, and amendments thereto.

the power of attorney form created by the Kansas judicial council pursuant to

the Kansas department for children and families

revised Kansas code for care of children

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 missing person and a verified missing person entry for the child can be found in the national crime information center missing person system;~~ or~~

(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 that there is*~~ ***has probable cause to believe that*** *a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,* ***is*** *occurring in the child's residence* ~~*that*~~ ***and reasonably believes such violation*** *threatens the safety of the child.*

(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. 72-1111, and amendments thereto, during the hours school is actually in session and shall deliver the child pursuant ~~to subsection (g) of~~ K.S.A. 2014 Supp. 38-2232*(g)*, and amendments thereto.

Sec.~~ 2.~~ ***{9.}*** K.S.A. 2014 Supp. 38-2231 is hereby repealed.

Sec.~~ 3.~~ ***{10.}*** This act shall take effect and be in force from and after its publication in the statute book.