

## HOUSE BILL No. 2699

By Committee on Judiciary

2-14

1 AN ACT concerning children and minors; relating to the revised Kansas  
2 code for care of children; children in state custody; court services  
3 officer assistance; amending K.S.A. 2019 Supp. 38-2255 and repealing  
4 the existing section.

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

7 Section 1. K.S.A. 2019 Supp. 38-2255 is hereby amended to read as  
8 follows: 38-2255. (a) *Considerations.* Prior to entering an order of  
9 disposition, the court shall give consideration to:

- 10 (1) The child's physical, mental and emotional condition;  
11 (2) the child's need for assistance;  
12 (3) the manner in which the parent participated in the abuse, neglect  
13 or abandonment of the child;  
14 (4) any relevant information from the intake and assessment process;  
15 and  
16 (5) the evidence received at the dispositional hearing.

17 (b) *Custody with a parent.* The court may place the child in the  
18 custody of either of the child's parents subject to terms and conditions  
19 which the court prescribes to assure the proper care and protection of the  
20 child, including, but not limited to:

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

26 (c) *Removal of a child from custody of a parent.* The court shall not  
27 enter the initial order removing a child from the custody of a parent  
28 pursuant to this section unless the court first finds probable cause that: (1)

- 29 (A) The child is likely to sustain harm if not immediately removed from  
30 the home;  
31 (B) allowing the child to remain in home is contrary to the welfare of  
32 the child; or  
33 (C) immediate placement of the child is in the best interest of the  
34 child; and  
35 (2) reasonable efforts have been made to maintain the family unit and  
36 prevent the unnecessary removal of the child from the child's home or that

1 an emergency exists which threatens the safety to the child.

2 The court shall not enter an order removing a child from the custody of  
3 a parent pursuant to this section based solely on the finding that the parent  
4 is homeless.

5 (d) *Custody of a child removed from the custody of a parent.* If the  
6 court has made the findings required by subsection (c), the court shall  
7 enter an order awarding custody to: A relative of the child or to a person  
8 with whom the child has close emotional ties who shall not be required to  
9 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,  
10 and amendments thereto; any other suitable person; a shelter facility; a  
11 youth residential facility; a staff secure facility, notwithstanding any other  
12 provision of law, if the child has been subjected to human trafficking or  
13 aggravated human trafficking, as defined by K.S.A. 2019 Supp. 21-5426,  
14 and amendments thereto, or commercial sexual exploitation of a child, as  
15 defined by K.S.A. 2019 Supp. 21-6422, and amendments thereto, or the  
16 child committed an act which, if committed by an adult, would constitute a  
17 violation of K.S.A. 2019 Supp. 21-6419, and amendments thereto; or, if  
18 the child is 15 years of age or younger, or 16 or 17 years of age if the child  
19 has no identifiable parental or family resources or shows signs of physical,  
20 mental, emotional or sexual abuse, to the secretary. Custody awarded  
21 under this subsection shall continue until further order of the court.

22 (1) When custody is awarded to the secretary, the secretary shall  
23 consider any placement recommendation by the court and notify the court  
24 of the placement or proposed placement of the child within 10 days of the  
25 order awarding custody. After providing the parties or interested parties  
26 notice and opportunity to be heard, the court may determine whether the  
27 secretary's placement or proposed placement is contrary to the welfare or  
28 in the best interests of the child. In making that determination the court  
29 shall consider the health and safety needs of the child and the resources  
30 available to meet the needs of children in the custody of the secretary. If  
31 the court determines that the placement or proposed placement is contrary  
32 to the welfare or not in the best interests of the child, the court shall notify  
33 the secretary, who shall then make an alternative placement.

34 (2) The custodian designated under this subsection shall notify the  
35 court in writing at least 10 days prior to any planned placement with a  
36 parent. The written notice shall state the basis for the custodian's belief that  
37 placement with a parent is no longer contrary to the welfare or best interest  
38 of the child. Upon reviewing the notice, the court may allow the custodian  
39 to proceed with the planned placement or may set the date for a hearing to  
40 determine if the child shall be allowed to return home. If the court sets a  
41 hearing on the matter, the custodian shall not return the child home without  
42 written consent of the court.

43 (3) The court may grant any person reasonable rights to visit the child

1 upon motion of the person and a finding that the visitation rights would be  
2 in the best interests of the child.

3 (4) The court may enter an order restraining any alleged perpetrator  
4 of physical, mental or emotional abuse or sexual abuse of the child from  
5 residing in the child's home; visiting, contacting, harassing or intimidating  
6 the child, other family member or witness; or attempting to visit, contact,  
7 harass or intimidate the child, other family member or witness. Such  
8 restraining order shall be served by personal service pursuant to K.S.A.  
9 2019 Supp. 38-2237(a), and amendments thereto, on any alleged  
10 perpetrator to whom the order is directed.

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

14 (6) *The court may order supervision of a case by a court services*  
15 *officer when a child is in the custody of the secretary.*

16 (e) *Further determinations regarding a child removed from the home.*  
17 If custody has been awarded under subsection (d) to a person other than a  
18 parent, a permanency plan shall be provided or prepared pursuant to  
19 K.S.A. 2019 Supp. 38-2264, and amendments thereto. If a permanency  
20 plan is provided at the dispositional hearing, the court may determine  
21 whether reintegration is a viable alternative or, if reintegration is not a  
22 viable alternative, whether the child should be placed for adoption or a  
23 permanent custodian appointed. In determining whether reintegration is a  
24 viable alternative, the court shall consider:

25 (1) Whether a parent has been found by a court to have committed  
26 one of the following crimes or to have violated the law of another state  
27 prohibiting such crimes or to have aided and abetted, attempted, conspired  
28 or solicited the commission of one of these crimes: (A) Murder in the first  
29 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402,  
30 and amendments thereto; (B) murder in the second degree, K.S.A. 21-  
31 3402, prior to its repeal, or K.S.A. 2019 Supp. 21-5403, and amendments  
32 thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A.  
33 2019 Supp. 21-5401, and amendments thereto; (D) voluntary  
34 manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp.  
35 21-5404, and amendments thereto; or (E) a felony battery that resulted in  
36 bodily injury;

37 (2) whether a parent has subjected the child or another child to  
38 aggravated circumstances;

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

42 (4) whether the child has been in the custody of the secretary and  
43 placed with neither parent for 15 of the most recent 22 months beginning

1 60 days after the date on which a child in the secretary's custody was  
2 removed from the child's home;

3 (5) whether the parents have failed to work diligently toward  
4 reintegration;

5 (6) whether the secretary has provided the family with services  
6 necessary for the safe return of the child to the home; and

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

9 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
10 determines that reintegration is not a viable alternative, proceedings to  
11 terminate parental rights and permit placement of the child for adoption or  
12 appointment of a permanent custodian shall be initiated unless the court  
13 finds that compelling reasons have been documented in the case plan why  
14 adoption or appointment of a permanent custodian would not be in the best  
15 interests of the child. If compelling reasons have not been documented, the  
16 county or district attorney shall file a motion within 30 days to terminate  
17 parental rights or a motion to appoint a permanent custodian within 30  
18 days and the court shall hold a hearing on the motion within 90 days of its  
19 filing. No hearing is required when the parents voluntarily relinquish  
20 parental rights or consent to the appointment of a permanent custodian.

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

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

30 (2) If the court has reason to believe that a child is before the court  
31 due, in whole or in part, to the use or misuse of alcohol or a violation of  
32 K.S.A. 2019 Supp. 21-5701 through 21-5717, and amendments thereto, by  
33 the child, a parent of the child, or another person responsible for the care  
34 of the child, the court may order the child, parent of the child or other  
35 person responsible for the care of the child to submit to and complete an  
36 alcohol and drug evaluation by a qualified person or agency and comply  
37 with any recommendations. If the evaluation is performed by a  
38 community-based alcohol and drug safety program certified pursuant to  
39 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or  
40 other person responsible for the care of the child shall pay a fee not to  
41 exceed the fee established by that statute. If the court finds that the child  
42 and those legally liable for the child's support are indigent, the fee may be  
43 waived. In no event shall the fee be assessed against the secretary.

1       (3) If child support has been requested and the parent or parents have  
2 a duty to support the child, the court may order one or both parents to pay  
3 child support and, when custody is awarded to the secretary, the court shall  
4 order one or both parents to pay child support. The court shall determine,  
5 for each parent separately, whether the parent is already subject to an order  
6 to pay support for the child. If the parent is not presently ordered to pay  
7 support for any child who is subject to the jurisdiction of the court and the  
8 court has personal jurisdiction over the parent, the court shall order the  
9 parent to pay child support in an amount determined under K.S.A. 2019  
10 Supp. 38-2277, and amendments thereto. Except for good cause shown,  
11 the court shall issue an immediate income withholding order pursuant to  
12 K.S.A. 2019 Supp. 23-3101 et seq., and amendments thereto, for each  
13 parent ordered to pay support under this subsection, regardless of whether  
14 a payor has been identified for the parent. A parent ordered to pay child  
15 support under this subsection shall be notified, at the hearing or otherwise,  
16 that the child support order may be registered pursuant to K.S.A. 2019  
17 Supp. 38-2279, and amendments thereto. The parent shall also be informed  
18 that, after registration, the income withholding order may be served on the  
19 parent's employer without further notice to the parent and the child support  
20 order may be enforced by any method allowed by law. Failure to provide  
21 this notice shall not affect the validity of the child support order.

22       Sec. 2. K.S.A. 2019 Supp. 38-2255 is hereby repealed.

23       Sec. 3. This act shall take effect and be in force from and after its  
24 publication in the statute book.