

SENATE BILL No. 94

By Committee on Federal and State Affairs

2-3

1 AN ACT concerning children and minors; relating to orders of temporary
2 custody; amending K.S.A. 2010 Supp. 38-2243 and repealing the
3 existing section.
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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
13 office of the clerk of the court is not accessible, following a child having
14 been 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
17 hearing. Notice of a temporary custody hearing shall be given to all
18 parties and interested parties. *Reasonable efforts shall also be made to*
19 *notify any known first degree relatives of the child or any known person*
20 *who has close emotional ties with the child.*

21 (d) Notice of the temporary custody hearing shall be given at least
22 24 hours prior to the hearing. The court may continue the hearing to
23 afford the 24 hours prior notice or, with the consent of the party or
24 interested party, proceed with the hearing at the designated time. If an
25 order of temporary custody is entered and the parent or other person
26 having custody of the child has not been notified of the hearing, did not
27 appear or waive appearance and requests a rehearing, the court shall
28 rehear the matter 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
31 is 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
36 welfare 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
8 the 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
13 resources 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
19 in the plan to perform as set out in the plan. When the child is placed in
20 the 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
32 adjudication order is entered but not exceeding 60 days, unless good
33 cause is shown 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
41 amendments thereto, on any alleged perpetrator to whom the order is
42 directed.

43 (i) (1) The court shall not enter the initial order removing a child

1 from the custody of a parent pursuant to this section unless the court first
2 finds probable cause that: (A)(i) the child is likely to sustain harm if not
3 immediately removed from the home;

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

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

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

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

14 (j) If the court enters an order of temporary custody that provides for
15 placement of the child with a person other than the parent, the court shall
16 make a child support determination pursuant to K.S.A. 2010 Supp. 38-
17 2277, and amendments thereto.

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

25 Sec. 2. K.S.A. 2010 Supp. 38-2243 is hereby repealed.

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

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