

As Amended by House Committee

Session of 2024

HOUSE BILL No. 2581

By Committee on Child Welfare and Foster Care

Requested by Laura Howard on behalf of the Kansas Department for Children and Families

1-24

1 AN ACT concerning the secretary for children and families; relating to  
2 child support payments **for children in need of care**; eliminating the  
3 requirement that the court order child support to be paid to the secretary  
4 when custody of the child is awarded to the secretary ~~and the~~  
5 ~~requirement that; allowing the secretary to request~~ child support  
6 ~~payment requests shall be made~~ **payments** in a child in need of care  
7 petition; amending K.S.A. 38-2234 and K.S.A. 2023 Supp. 38-2255  
8 and repealing the existing sections.  
9

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

11 Section 1. K.S.A. 38-2234 is hereby amended to read as follows: 38-  
12 2234. (a) *Filing and contents of petition.* (1) A petition filed to commence  
13 an action pursuant to this code shall be filed with the clerk of the district  
14 court and shall state, if known:

- 15 (A) The name, date of birth and residence address of the child;  
16 (B) the name and residence address of the child's parents;  
17 (C) the name and address of the child's nearest known relative if no  
18 parent can be found;  
19 (D) the name and residence address of any persons having custody or  
20 control of the child; and  
21 (E) plainly and concisely in the language of the statutory definition,  
22 the basis for the petition.

23 (2) The petition shall also state the specific facts that are relied upon  
24 to support the allegation referred to in the preceding paragraph including  
25 any known dates, times and locations.

26 (3) The proceedings shall be entitled: "In the Interest of  
27 \_\_\_\_\_."

28 (4) The petition shall contain a request that the court find the child to  
29 be a child in need of care.

30 ~~(5) The petition shall contain a request that the parent or parents be~~  
31 ~~ordered to pay child support. The request for child support may be omitted~~  
32 ~~with respect to a parent already ordered to pay child support for the child~~  
33 ~~and shall be omitted with respect to one or both parents upon written~~  
34 ~~request of the secretary. **The petition may contain a request that the**~~

1 **parent or parents be ordered to pay child support. The request for**  
 2 **child support may be omitted with respect to a parent already ordered**  
 3 **to pay child support for the child and shall be omitted with respect to**  
 4 **one or both parents upon written request of the secretary.**

5 ~~(6)~~(6) If the petition requests custody of the child to the secretary or a  
 6 person other than the child's parent, the petition shall specify the efforts  
 7 known to the petitioner to have been made to maintain the family and  
 8 prevent the transfer of custody, or it shall specify the facts demonstrating  
 9 that an emergency exists ~~which~~ *that* threatens the safety ~~to~~ of the child.

10 ~~(7)~~(6)(7) If the petition requests removal of the child from the child's  
 11 home, in addition to the information required by K.S.A. 38-2234(a)(6),  
 12 and amendments thereto, the petition shall specify the facts demonstrating  
 13 that allowing the child to remain in the home would be contrary to the  
 14 welfare of the child or that placement is in the best interests of the child  
 15 and the child is likely to sustain harm if not removed from the home.

16 ~~(8)~~(7)(8) The petition shall have an attached copy of the prevention  
 17 plan, if any, that has been prepared for the child.

18 ~~(9)~~(8)(9) The petition shall contain the following statement: "If you  
 19 do not appear in court the court will be making decisions without your  
 20 input ~~which~~ *that* could result in:

21 (A) The permanent or temporary removal of the child from the  
 22 custody of the parent or present legal guardian;

23 (B) an order requiring one or both parents to pay child support until  
 24 the permanent termination of one or both of the parents' parental rights;

25 (C) the permanent termination of one or both of the parents' parental  
 26 rights; and

27 (D) the appointment of a permanent custodian for the child.

28 If you cannot attend the hearing you may send a written response to the  
 29 petition to the clerk of the court."

30 ~~(10)~~(9)(10) The petition shall contain the following statement: "You  
 31 may receive further notices of other hearings, proceedings and actions in  
 32 this case which you may attend. These notices will be sent to you by first  
 33 class mail to your last known address or an address you provide to the  
 34 court. It is your responsibility to keep the court informed of your current  
 35 address."

36 (b) *Motions.* Motions may be made orally or in writing. The motion  
 37 shall state with particularity the grounds for the motion and shall state the  
 38 relief or order sought.

39 Sec. 2. K.S.A. 2023 Supp. 38-2255 is hereby amended to read as  
 40 follows: 38-2255. (a) *Considerations.* Prior to entering an order of  
 41 disposition, the court shall give consideration to:

42 (1) The child's physical, mental and emotional condition;

43 (2) the child's need for assistance;

1 (3) the manner—~~in~~ by which the parent participated in the abuse,  
2 neglect or abandonment of the child;

3 (4) any relevant information from the intake and assessment process;  
4 and

5 (5) the evidence received at the dispositional hearing.

6 (b) *Custody with a parent.* The court may place the child in the  
7 custody of either of the child's parents subject to terms and conditions  
8 ~~which~~ that the court prescribes to assure the proper care and protection of  
9 the child, including, but not limited to:

10 (1) Supervision of the child and the parent by a court services officer;

11 (2) participation by the child and the parent in available programs  
12 operated by an appropriate individual or agency; and

13 (3) any special treatment or care which the child needs for the child's  
14 physical, mental or emotional health and safety.

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

18 ~~(A)~~(i) The child is likely to sustain harm if not immediately  
19 removed from the home;

20 ~~(B)~~(ii) allowing the child to remain in home is contrary to the welfare  
21 of the child; or

22 ~~(C)~~(iii) immediate placement of the child is in the best interest of the  
23 child; and

24 ~~(2)~~(B) reasonable efforts have been made to maintain the family unit  
25 and prevent the unnecessary removal of the child from the child's home or  
26 that an emergency exists—~~which~~ that threatens the safety ~~to~~ of the child.

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

30 (d) *Custody of a child removed from the custody of a parent.* If the  
31 court has made the findings required by subsection (c), the court shall  
32 enter an order awarding custody to: A relative of the child or to a person  
33 with whom the child has close emotional ties who shall not be required to  
34 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,  
35 and amendments thereto; any other suitable person; a shelter facility; a  
36 youth residential facility; a staff secure facility, notwithstanding any other  
37 provision of law, if the child has been subjected to human trafficking or  
38 aggravated human trafficking, as defined by K.S.A. 21-5426, and  
39 amendments thereto, or commercial sexual exploitation of a child, as  
40 defined by K.S.A. 21-6422, and amendments thereto, or the child  
41 committed an act—~~which~~ that, if committed by an adult, would constitute a  
42 violation of K.S.A. 21-6419, and amendments thereto; or, if the child is 15  
43 years of age or younger, or 16 or 17 years of age if the child has no

1 identifiable parental or family resources or shows signs of physical,  
2 mental, emotional or sexual abuse, to the secretary. Custody awarded  
3 under this subsection shall continue until further order of the court.

4 (1) When custody is awarded to the secretary, the secretary shall  
5 consider any placement recommendation by the court and notify the court  
6 of the placement or proposed placement of the child within 10 days of the  
7 order awarding custody. After providing the parties or interested parties  
8 notice and opportunity to be heard, the court may determine whether the  
9 secretary's placement or proposed placement is contrary to the welfare or  
10 in the best interests of the child. In making that determination the court  
11 shall consider the health and safety needs of the child and the resources  
12 available to meet the needs of children in the custody of the secretary. If  
13 the court determines that the placement or proposed placement is contrary  
14 to the welfare or not in the best interests of the child, the court shall notify  
15 the secretary, who shall then make an alternative placement.

16 (2) The custodian designated under this subsection shall notify the  
17 court in writing at least 10 days prior to any planned placement with a  
18 parent. The written notice shall state the basis for the custodian's belief that  
19 placement with a parent is no longer contrary to the welfare or best interest  
20 of the child. Upon reviewing the notice, the court may allow the custodian  
21 to proceed with the planned placement or may set the date for a hearing to  
22 determine if the child shall be allowed to return home. If the court sets a  
23 hearing on the matter, the custodian shall not return the child home without  
24 written consent of the court.

25 (3) The court may grant any person reasonable rights to visit the child  
26 upon motion of the person and a finding that the visitation rights would be  
27 in the best interests of the child.

28 (4) The court may enter an order restraining any alleged perpetrator  
29 of physical, mental or emotional abuse or sexual abuse of the child from:  
30 Residing in the child's home; visiting, contacting, harassing or intimidating  
31 the child, other family member or witness; or attempting to visit, contact,  
32 harass or intimidate the child, other family member or witness. Such  
33 restraining order shall be served by personal service pursuant to K.S.A.  
34 38-2237(a), and amendments thereto, on any alleged perpetrator to whom  
35 the order is directed.

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

39 (e) *Further determinations regarding a child removed from the home.*  
40 If custody has been awarded under subsection (d) to a person other than a  
41 parent, a permanency plan shall be provided or prepared pursuant to  
42 K.S.A. 38-2264, and amendments thereto. If a permanency plan is  
43 provided at the dispositional hearing, the court may determine whether

1 reintegration is a viable alternative or, if reintegration is not a viable  
2 alternative, whether the child should be placed for adoption or a permanent  
3 custodian appointed. In determining whether reintegration is a viable  
4 alternative, the court shall consider *whether*:

5 (1) ~~Whether~~ A parent has been found by a court to have committed  
6 one of the following crimes or to have violated the law of another state  
7 prohibiting such crimes or to have aided and abetted, attempted, conspired  
8 or solicited the commission of one of these crimes: (A) Murder in the first  
9 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and  
10 amendments thereto; (B) murder in the second degree, K.S.A. 21-3402,  
11 prior to its repeal, or K.S.A. 21-5403, and amendments thereto; (C) capital  
12 murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and  
13 amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, prior to  
14 its repeal, or K.S.A. 21-5404, and amendments thereto; or (E) a felony  
15 battery that resulted in bodily injury;

16 (2) ~~whether~~ a parent has subjected the child or another child to  
17 aggravated circumstances;

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

21 (4) ~~whether~~ the child has been in the custody of the secretary and  
22 placed with neither parent for 15 of the most recent 22 months beginning  
23 60 days after the date ~~on which~~ *when* a child in the secretary's custody was  
24 removed from the child's home;

25 (5) ~~whether~~ the parents have failed to work diligently toward  
26 reintegration;

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

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

31 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
32 determines that reintegration is not a viable alternative, proceedings to  
33 terminate parental rights and permit placement of the child for adoption or  
34 appointment of a permanent custodian shall be initiated unless the court  
35 finds that compelling reasons have been documented in the case plan why  
36 adoption or appointment of a permanent custodian would not be in the best  
37 interests of the child. If compelling reasons have not been documented, the  
38 county or district attorney shall file a motion within 30 days to terminate  
39 parental rights or a motion to appoint a permanent custodian within 30  
40 days, and the court shall hold a hearing on the motion within 90 days of its  
41 filing. No hearing is required when the parents voluntarily relinquish  
42 parental rights or consent to the appointment of a permanent custodian.

43 (g) *Additional orders.* In addition to or in lieu of any other order

1 authorized by this section:

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

9 (2) If the court has reason to believe that a child is before the court  
10 due, in whole or in part, to the use or misuse of alcohol or a violation of  
11 K.S.A. 21-5701 through 21-5717, and amendments thereto, by the child, a  
12 parent of the child, or another person responsible for the care of the child,  
13 the court may order the child, parent of the child or other person  
14 responsible for the care of the child to submit to and complete an alcohol  
15 and drug evaluation by a qualified person or agency and comply with any  
16 recommendations. If the evaluation is performed by a community-based  
17 alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and  
18 amendments thereto, the child, parent of the child or other person  
19 responsible for the care of the child shall pay a fee not to exceed the fee  
20 established by that statute. If the court finds that the child and those legally  
21 liable for the child's support are indigent, the fee may be waived. In no  
22 event shall the fee be assessed against the secretary.

23 (3) If child support has been requested and the parent or parents have  
24 a duty to support the child, the court may order one or both parents to pay  
25 child support ~~and~~. When custody of a child is awarded to the secretary, the  
26 court ~~shall~~ may order one or both parents to pay child support. *If the court*  
27 *orders child support*, the court shall determine, for each parent separately,  
28 whether the parent is already subject to an order to pay support for the  
29 child. If the parent is not presently ordered to pay support for any child  
30 who is subject to the jurisdiction of the court and the court has personal  
31 jurisdiction over the parent, the court shall order the parent to pay child  
32 support in an amount determined under K.S.A. 38-2277, and amendments  
33 thereto. Except for good cause shown, the court shall issue an immediate  
34 income withholding order pursuant to K.S.A. 23-3101 et seq., and  
35 amendments thereto, for each parent ordered to pay support under this  
36 subsection, regardless of whether a payor has been identified for the  
37 parent. A parent ordered to pay child support under this subsection shall be  
38 notified, at the hearing or otherwise, that the child support order may be  
39 registered pursuant to K.S.A. 38-2279, and amendments thereto. The  
40 parent shall also be informed that, after registration, the income  
41 withholding order may be served on the parent's employer without further  
42 notice to the parent and the child support order may be enforced by any  
43 method allowed by law. Failure to provide this notice shall not affect the

1 validity of the child support order.

2 (h) For the purposes of this section, "harassing or intimidating" and  
3 "harass or intimidate" ~~includes~~ *include*, but ~~is~~ *are* not limited to, utilizing  
4 any electronic tracking system or acquiring tracking information to  
5 determine the targeted person's location, movement or travel patterns.

6 Sec. 3. K.S.A. 38-2234 and K.S.A. 2023 Supp. 38-2255 are hereby  
7 repealed.

8 Sec. 4. This act shall take effect and be in force from and after its  
9 publication in the statute book.