

HOUSE BILL No. 2271

By Representative Thomas

2-9

1 AN ACT concerning children and minors; relating to children in the
2 custody of the secretary for children and families; providing for an
3 extension or re-entry of custody for persons up to 21 years of age;
4 amending K.S.A. 2020 Supp. 38-2202 and 38-2203 and repealing the
5 existing sections.
6

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

8 Section 1. K.S.A. 2020 Supp. 38-2202 is hereby amended to read as
9 follows: 38-2202. As used in the revised Kansas code for care of children,
10 unless the context otherwise indicates:

11 (a) "Abandon" or "abandonment" means to forsake, desert or, without
12 making appropriate provision for substitute care, cease providing care for
13 the child.

14 (b) "Adult correction facility" means any public or private facility,
15 secure or nonsecure, that is used for the lawful custody of accused or
16 convicted adult criminal offenders.

17 (c) "Aggravated circumstances" means the abandonment, torture,
18 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

19 (d) "Child in need of care" means a person less than 18 years of age
20 at the time of filing of the petition or issuance of an ex parte protective
21 custody order pursuant to K.S.A. 2020 Supp. 38-2242, and amendments
22 thereto, who:

23 (1) Is without adequate parental care, control or subsistence and the
24 condition is not due solely to the lack of financial means of the child's
25 parents or other custodian;

26 (2) is without the care or control necessary for the child's physical,
27 mental or emotional health;

28 (3) has been physically, mentally or emotionally abused or neglected
29 or sexually abused;

30 (4) has been placed for care or adoption in violation of law;

31 (5) has been abandoned or does not have a known living parent;

32 (6) is not attending school as required by K.S.A. 72-3421 or 72-3120,
33 and amendments thereto;

34 (7) except in the case of a violation of K.S.A. 41-727, ~~K.S.A. 74-~~
35 ~~8810(j), K.S.A. or 79-3321(m) or (n), and amendments thereto,~~ or K.S.A.
36 2020 Supp. 21-6301(a)(14), and amendments thereto, or, except as

1 provided in paragraph (12), does an act which, when committed by a
2 person under 18 years of age, is prohibited by state law, city ordinance or
3 county resolution, but which is not prohibited when done by an adult;

4 (8) while less than 10 years of age, commits any act that if done by an
5 adult would constitute the commission of a felony or misdemeanor as
6 defined by K.S.A. 2020 Supp. 21-5102, and amendments thereto;

7 (9) is willfully and voluntarily absent from the child's home without
8 the consent of the child's parent or other custodian;

9 (10) is willfully and voluntarily absent at least a second time from a
10 court ordered or designated placement, or a placement pursuant to court
11 order, if the absence is without the consent of the person with whom the
12 child is placed or, if the child is placed in a facility, without the consent of
13 the person in charge of such facility or such person's designee;

14 (11) has been residing in the same residence with a sibling or another
15 person under 18 years of age, who has been physically, mentally or
16 emotionally abused or neglected, or sexually abused;

17 (12) while less than 10 years of age commits the offense defined in
18 K.S.A. 2020 Supp. 21-6301(a)(14), and amendments thereto;

19 (13) has had a permanent custodian appointed and the permanent
20 custodian is no longer able or willing to serve; or

21 (14) has been subjected to an act that would constitute human
22 trafficking or aggravated human trafficking, as defined by K.S.A. 2020
23 Supp. 21-5426, and amendments thereto, or commercial sexual
24 exploitation of a child, as defined by K.S.A. 2020 Supp. 21-6422, and
25 amendments thereto, or has committed an act which, if committed by an
26 adult, would constitute selling sexual relations, as defined by K.S.A. 2020
27 Supp. 21-6419, and amendments thereto.

28 (e) "Citizen review board" is a group of community volunteers
29 appointed by the court and whose duties are prescribed by K.S.A. 2020
30 Supp. 38-2207 and 38-2208, and amendments thereto.

31 (f) "Civil custody case" includes any case filed under chapter 23 of
32 the Kansas Statutes Annotated, and amendments thereto, the Kansas
33 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
34 and amendments thereto, determination of parentage, article 21 of chapter
35 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
36 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
37 Annotated, and amendments thereto, guardians and conservators.

38 (g) "Court-appointed special advocate" means a responsible adult
39 other than an attorney guardian ad litem who is appointed by the court to
40 represent the best interests of a child, as provided in K.S.A. 2020 Supp.
41 38-2206, and amendments thereto, in a proceeding pursuant to this code.

42 (h) "Custody" whether temporary, protective or legal, means the
43 status created by court order or statute that vests in a custodian, whether an

1 individual or an agency, the right to physical possession of the child and
2 the right to determine placement of the child, subject to restrictions placed
3 by the court.

4 (i) "Extended out of home placement" means a child has been in the
5 custody of the secretary and placed with neither parent for 15 of the most
6 recent 22 months beginning 60 days after the date at which a child in the
7 custody of the secretary was removed from the child's home.

8 (j) "Educational institution" means all schools at the elementary and
9 secondary levels.

10 (k) "Educator" means any administrator, teacher or other professional
11 or paraprofessional employee of an educational institution who has
12 exposure to a pupil specified in K.S.A. 72-6143(a), and amendments
13 thereto.

14 (l) "Harm" means physical or psychological injury or damage.

15 (m) "Interested party" means the grandparent of the child, a person
16 with whom the child has been living for a significant period of time when
17 the child in need of care petition is filed, and any person made an
18 interested party by the court pursuant to K.S.A. 2020 Supp. 38-2241, and
19 amendments thereto, or Indian tribe seeking to intervene that is not a party.

20 (n) "Jail" means:

21 (1) An adult jail or lockup; or

22 (2) a facility in the same building or on the same grounds as an adult
23 jail or lockup, unless the facility meets all applicable standards and
24 licensure requirements under law and there is:

25 (A) Total separation of the juvenile and adult facility spatial areas
26 such that there could be no haphazard or accidental contact between
27 juvenile and adult residents in the respective facilities;

28 (B) total separation in all juvenile and adult program activities within
29 the facilities, including recreation, education, counseling, health care,
30 dining, sleeping and general living activities; and

31 (C) separate juvenile and adult staff, including management, security
32 staff and direct care staff such as recreational, educational and counseling.

33 (o) "Juvenile detention facility" means any secure public or private
34 facility used for the lawful custody of accused or adjudicated juvenile
35 offenders that must not be a jail.

36 (p) "Juvenile intake and assessment worker" means a responsible
37 adult authorized to perform intake and assessment services as part of the
38 intake and assessment system established pursuant to K.S.A. 75-7023, and
39 amendments thereto.

40 (q) "Kinship care placement" means the placement of a child in the
41 home of an adult with whom the child or the child's parent already has
42 close emotional ties.

43 (r) "Law enforcement officer" means any person who by virtue of

1 office or public employment is vested by law with a duty to maintain
2 public order or to make arrests for crimes, whether that duty extends to all
3 crimes or is limited to specific crimes.

4 (s) "Multidisciplinary team" means a group of persons, appointed by
5 the court under K.S.A. 2020 Supp. 38-2228, and amendments thereto, that
6 has knowledge of the circumstances of a child in need of care.

7 (t) "Neglect" means acts or omissions by a parent, guardian or person
8 responsible for the care of a child resulting in harm to a child, or
9 presenting a likelihood of harm, and the acts or omissions are not due
10 solely to the lack of financial means of the child's parents or other
11 custodian. Neglect may include, but shall not be limited to:

12 (1) Failure to provide the child with food, clothing or shelter
13 necessary to sustain the life or health of the child;

14 (2) failure to provide adequate supervision of a child or to remove a
15 child from a situation that requires judgment or actions beyond the child's
16 level of maturity, physical condition or mental abilities and that results in
17 bodily injury or a likelihood of harm to the child; or

18 (3) failure to use resources available to treat a diagnosed medical
19 condition if such treatment will make a child substantially more
20 comfortable, reduce pain and suffering, or correct or substantially diminish
21 a crippling condition from worsening. A parent legitimately practicing
22 religious beliefs who does not provide specified medical treatment for a
23 child because of religious beliefs shall, not for that reason, be considered a
24 negligent parent; however, this exception shall not preclude a court from
25 entering an order pursuant to K.S.A. 2020 Supp. 38-2217(a)(2), and
26 amendments thereto.

27 (u) "Parent" when used in relation to a child or children, includes a
28 guardian and every person who is by law liable to maintain, care for or
29 support the child.

30 (v) "Party" means the state, the petitioner, the child, any parent of the
31 child and an Indian child's tribe intervening pursuant to the Indian child
32 welfare act.

33 (w) "Permanency goal" means the outcome of the permanency
34 planning process, which may be reintegration, adoption, appointment of a
35 permanent custodian or another planned permanent living arrangement.

36 (x) "Permanent custodian" means a judicially approved permanent
37 guardian of a child pursuant to K.S.A. 2020 Supp. 38-2272, and
38 amendments thereto.

39 (y) "Physical, mental or emotional abuse" means the infliction of
40 physical, mental or emotional harm or the causing of a deterioration of a
41 child and may include, but shall not be limited to, maltreatment or
42 exploiting a child to the extent that the child's health or emotional well-
43 being is endangered.

1 (z) "Placement" means the designation by the individual or agency
2 having custody of where and with whom the child will live.

3 (aa) "Qualified residential treatment program" means a program
4 designated by the secretary for children and families as a qualified
5 residential treatment program pursuant to federal law.

6 (bb) "Reasonable and prudent parenting standard" means the standard
7 characterized by careful and sensible parental decisions that maintain the
8 health, safety and best interests of a child while at the same time
9 encouraging the emotional and developmental growth of the child, that a
10 caregiver shall use when determining whether to allow a child in foster
11 care under the responsibility of the state to participate in extracurricular,
12 enrichment, cultural and social activities.

13 (cc) "Relative" means a person related by blood, marriage or
14 adoption.

15 (dd) "Runaway" means a child who is willfully and voluntarily absent
16 from the child's home without the consent of the child's parent or other
17 custodian.

18 (ee) "Secretary" means the secretary for children and families or the
19 secretary's designee.

20 (ff) "Secure facility" means a facility, other than a staff secure facility
21 or juvenile detention facility, that is operated or structured so as to ensure
22 that all entrances and exits from the facility are under the exclusive control
23 of the staff of the facility, whether or not the person being detained has
24 freedom of movement within the perimeters of the facility, or that relies on
25 locked rooms and buildings, fences or physical restraint in order to control
26 behavior of its residents. No secure facility shall be in a city or county jail.

27 (gg) "Sexual abuse" means any contact or interaction with a child in
28 which the child is being used for the sexual stimulation of the perpetrator,
29 the child or another person. "Sexual abuse" ~~shall include~~ *includes*, but is
30 not limited to, allowing, permitting or encouraging a child to:

31 (1) Be photographed, filmed or depicted in pornographic material; or

32 (2) be subjected to aggravated human trafficking, as defined in
33 K.S.A. 2020 Supp. 21-5426(b), and amendments thereto, if committed in
34 whole or in part for the purpose of the sexual gratification of the offender
35 or another, or be subjected to an act that would constitute conduct
36 proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or
37 K.S.A. 2020 Supp. 21-6419 or 21-6422, and amendments thereto.

38 (hh) "Shelter facility" means any public or private facility or home,
39 other than a juvenile detention facility or staff secure facility, that may be
40 used in accordance with this code for the purpose of providing either
41 temporary placement for children in need of care prior to the issuance of a
42 dispositional order or longer term care under a dispositional order.

43 (ii) "Staff secure facility" means a facility described in K.S.A. 65-

1 535, and amendments thereto: (1) That does not include construction
2 features designed to physically restrict the movements and activities of
3 juvenile residents who are placed therein; (2) that may establish reasonable
4 rules restricting entrance to and egress from the facility; and (3) in which
5 the movements and activities of individual juvenile residents may, for
6 treatment purposes, be restricted or subject to control through the use of
7 intensive staff supervision. No staff secure facility shall be in a city or
8 county jail.

9 (jj) "Transition plan" means, when used in relation to a youth in the
10 custody of the secretary, an individualized strategy for the provision of
11 medical, mental health, education, employment and housing supports as
12 needed for the adult and, if applicable, for any minor child of the adult, to
13 live independently and specifically provides for the supports and any
14 services for which an adult with a disability is eligible including, but not
15 limited to, funding for home and community based services waivers.

16 (kk) "Youth residential facility" means any home, foster home or
17 structure that provides 24-hour-a-day care for children and that is licensed
18 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and
19 amendments thereto.

20 (mm) *"Adult child in need of care" means a person at least 18 years*
21 *of age but less than 21 years of age who, except for the age requirement,*
22 *meets the definition of child in need of care in subsection (d).*

23 Sec. 2. K.S.A. 2020 Supp. 38-2203 is hereby amended to read as
24 follows: 38-2203. (a) Proceedings concerning any child who may be a
25 child in need of care shall be governed by this code, except in those
26 instances when the court knows or has reason to know that an Indian child
27 is involved in the proceeding, in which case, the Indian child welfare act of
28 1978, 25 U.S.C. § 1901 et seq., applies. The Indian child welfare act may
29 apply to: The filing to initiate a child in need of care proceeding, K.S.A.
30 2020 Supp. 38-2234, and amendments thereto; ex parte custody orders,
31 K.S.A. 2020 Supp. 38-2242, and amendments thereto; temporary custody
32 hearing, K.S.A. 2020 Supp. 38-2243, and amendments thereto;
33 adjudication, K.S.A. 2020 Supp. 38-2247, and amendments thereto;
34 burden of proof, K.S.A. 2020 Supp. 38-2250, and amendments thereto;
35 disposition, K.S.A. 2020 Supp. 38-2255, and amendments thereto;
36 permanency hearings, K.S.A. 2020 Supp. 38-2264, and amendments
37 thereto; termination of parental rights, K.S.A. 2020 Supp. 38-2267, 38-
38 2268 and 38-2269, and amendments thereto; establishment of permanent
39 custodianship, K.S.A. 2020 Supp. 38-2268 and 38-2272, and amendments
40 thereto; the placement of a child in any foster, pre-adoptive and adoptive
41 home and the placement of a child in a guardianship arrangement under
42 article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments
43 thereto.

1 (b) Subject to the uniform child custody jurisdiction and enforcement
2 act, K.S.A. 2020 Supp. 23-37,101 through 23-37,405, and amendments
3 thereto, the district court shall have original jurisdiction of proceedings
4 pursuant to this code.

5 (c) (1) The court acquires jurisdiction over a child by the filing of a
6 petition pursuant to this code or upon issuance of an ex parte order
7 pursuant to K.S.A. 2020 Supp. 38-2242, and amendments thereto. *Except*
8 *as provided in paragraphs (3) and (4)*, when the court acquires jurisdiction
9 over a child in need of care, jurisdiction may continue until the child has:

10 ~~(1)~~(A) Become 18 years of age, or until June 1 of the school year
11 during which the child became 18 years of age if the child is still attending
12 high school unless there is no court approved transition plan, in which
13 event jurisdiction may continue until a transition plan is approved by the
14 court or until the child reaches the age of 21;

15 ~~(2)~~(B) been adopted; or

16 ~~(3)~~(C) been discharged by the court.

17 (2) Any child 18 years of age or over may request, in writing to the
18 court, that the jurisdiction of the court cease. The court shall give notice of
19 the request to all parties and interested parties and 30 days after receipt of
20 the request, jurisdiction will cease.

21 (3) *Upon request of the child, in writing to the court, the court shall*
22 *not issue an order terminating jurisdiction over such child:*

23 (A) *Before June 1 of the school year during which the child becomes*
24 *18 years of age if the child is in an out-of-home placement, is still*
25 *attending high school and has not completed a high school education; or*

26 (B) *who is 21 years of age or younger.*

27 (4) (A) *Any adult child in need of care who has previously been under*
28 *the jurisdiction of the court and is less than 21 years of age may apply to*
29 *the Kansas department for children and families to be placed in the*
30 *custody of the secretary. The application shall include a statement*
31 *establishing how re-entering the custody of the secretary will support such*
32 *adult child. Such adult child may include a letter of recommendation in the*
33 *application.*

34 (B) *After reviewing the application, the department may refer the*
35 *case to a county or district attorney to file a petition pursuant to K.S.A.*
36 *2020 Supp. 38-2233, and amendments thereto.*

37 (C) *Such adult child shall participate in case planning, attend school*
38 *or work and make efforts toward independence as determined by the*
39 *department. If such adult child fails to comply with the provisions of this*
40 *paragraph, the department may petition the court to terminate the*
41 *placement.*

42 (D) *The court shall not have jurisdiction over such adult child after*
43 *such adult child attains 21 years of age.*

1 (d) When it is no longer appropriate for the court to exercise
2 jurisdiction over a child *pursuant to subsection (c)*, the court, upon its own
3 motion or the motion of a party or interested party at a hearing or upon
4 agreement of all parties or interested parties, shall enter an order
5 discharging the child. ~~Except upon request of the child pursuant to~~
6 ~~subsection (c), the court shall not enter an order discharging a child until~~
7 ~~June 1 of the school year during which the child becomes 18 years of age~~
8 ~~if the child is in an out-of-home placement, is still attending high school~~
9 ~~and has not completed the child's high school education.~~

10 (e) When a petition is filed under this code, a person who is alleged to
11 be under 18 years of age shall be presumed to be under that age for the
12 purposes of this code, unless the contrary is proved.

13 (f) A court's order issued in a proceeding pursuant to this code, shall
14 take precedence over such orders in a civil custody case, a proceeding
15 under article 31 of chapter 60 of the Kansas Statutes Annotated, and
16 amendments thereto, protection from abuse act, or a comparable case in
17 another jurisdiction, except as provided by K.S.A. 2020 Supp. 23-37,101
18 through 23-37,405, and amendments thereto, uniform child custody
19 jurisdiction and enforcement act.

20 Sec. 3. K.S.A. 2020 Supp. 38-2202 and 38-2203 are hereby repealed.

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