

HOUSE BILL No. 2034

By Committee on Child Welfare and Foster Care

1-17

1 AN ACT concerning children and minors; relating to procedures in
2 investigations of child abuse or neglect; requiring a child abuse review
3 and evaluation referral; creating a program in the department of health
4 and environment for the training and payment for child abuse reviews
5 and exams; defining child abuse review and evaluation providers,
6 networks and examination and child abuse medical resource centers;
7 amending K.S.A. 38-2202 and 38-2226 and repealing the existing
8 sections.
9

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

11 New Section 1. (a) (1) When an investigation of child abuse or
12 neglect conducted pursuant to K.S.A. 38-2226, and amendments thereto,
13 includes a CARE referral that a child abuse medical resource center has
14 recommended a CARE exam be conducted and the CARE provider
15 determines a child has been subjected to physical abuse, emotional abuse,
16 medical neglect or physical neglect, such determination shall be reported
17 in a completed review and provided to the secretary and the local law
18 enforcement agency or the agency's designee.

19 (2) When the secretary receives a completed review pursuant to
20 paragraph (1), the secretary shall consider and include the completed
21 review in making recommendations regarding the care, safety and
22 placement of the child and maintain the completed review in the case
23 record.

24 (3) Reviews conducted pursuant to paragraph (1) shall be confidential
25 and not be disclosed except as provided in this section and K.S.A. 38-2209
26 through 38-2213, and amendments thereto.

27 (b) To provide forensic evaluation services to a child alleged to be a
28 victim of physical abuse, emotional abuse, medical neglect or physical
29 neglect in investigations that include a CARE exam:

30 (1) Child abuse medical resource centers may collaborate directly or
31 through technology with CARE providers to provide forensic medical
32 evaluations, medical training, support, mentoring and peer review to
33 enhance the skill and role of child abuse medical resource centers and the
34 CARE providers in a multidisciplinary context;

1 (2) CARE providers and child abuse medical resource centers shall
2 provide and receive specialized training for medical evaluations conducted
3 in a hospital, child advocacy center or by a private healthcare professional
4 without the need for an agreement between such center and provider; and

5 (3) the CARE network shall develop recommendations concerning
6 the medical-based screening process and forensic evidence collection for a
7 child and provide such recommendations to CARE providers, child
8 advocacy centers, hospitals and licensed practitioners.

9 (c) To implement and administer this section, the secretary of health
10 and environment shall:

11 (1) Provide training for CARE providers to establish and maintain
12 compliance with the requirements of K.S.A. 38-2202, and amendments
13 thereto;

14 (2) assist in the implementation of subsection (b);

15 (3) pay for and manage a network referral system database; and

16 (4) adopt rules and regulations as necessary, subject to available
17 appropriations.

18 (d) (1) A provider shall submit all charges for payment of reviews and
19 CARE exams to the secretary of health and environment within 90 days
20 after a review or exam has been performed.

21 (2) The secretary of health and environment shall pay all charges
22 directly to the provider within 30 days after being submitted.

23 (3) The payment amount shall be for the exam at the rate ~~of a~~
24 ~~reasonable cost~~ **not to exceed \$750** for providing such exam, excluding
25 costs for treatment that may be required due to the diagnosis, or any
26 facility fees, supplies or laboratory or radiology testing.

27 ***(4) If a provider is found to have submitted fraudulent charges,***
28 ***such provider shall be banned from the CARE network and the secretary***
29 ***of health and environment shall report such incident to the provider's***
30 ***licensing board. Such licensing board shall investigate such report to***
31 ***determine whether unprofessional conduct has occurred.***

32 (e) There is hereby established in the state treasury the child abuse
33 review and evaluation fund, and such fund shall be administered by the
34 secretary of health and environment. All expenditures from the child abuse
35 review and evaluation fund shall be for payments of CARE exams,
36 training of CARE providers and the implementation and administration of
37 subsection (b), as needed. All expenditures from the child abuse review
38 and evaluation fund shall be made in accordance with appropriation acts
39 upon warrants of the director of accounts and reports issued pursuant to
40 vouchers approved by the secretary of health and environment or the
41 secretary's designee. All moneys received for CARE exams and CARE
42 provider training shall be remitted to the state treasurer in accordance with
43 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt

1 of each such remittance, the state treasurer shall deposit the entire amount
2 in the state treasury to the credit of the child abuse review and evaluation
3 fund.

4 (f) This section shall be a part of and supplemental to the revised
5 Kansas code for care of children.

6 Sec. 2. K.S.A. 38-2202 is hereby amended to read as follows: 38-
7 2202. As used in the revised Kansas code for care of children, unless the
8 context otherwise indicates:

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

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

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

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

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

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

25 (3) has been physically, mentally or emotionally abused or neglected
26 or sexually abused;

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

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

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

31 (7) except in the case of a violation of K.S.A. 41-727, ~~K.S.A. 74-~~
32 ~~8810(j), K.S.A. 79-3321(m) or (n), and amendments thereto,~~ or K.S.A.
33 2022 Supp. 21-6301(a)(14), and amendments thereto, or, except as
34 provided in paragraph (12), does an act which, when committed by a
35 person under 18 years of age, is prohibited by state law, city ordinance or
36 county resolution, but which is not prohibited when done by an adult;

37 (8) while less than 10 years of age, commits any act that if done by an
38 adult would constitute the commission of a felony or misdemeanor as
39 defined by K.S.A. 2022 Supp. 21-5102, and amendments thereto;

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

42 (10) is willfully and voluntarily absent at least a second time from a
43 court ordered or designated placement, or a placement pursuant to court

1 order, if the absence is without the consent of the person with whom the
2 child is placed or, if the child is placed in a facility, without the consent of
3 the person in charge of such facility or such person's designee;

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

7 (12) while less than 10 years of age commits the offense defined in
8 K.S.A. 2022 Supp. 21-6301(a)(14), and amendments thereto;

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

11 (14) has been subjected to an act that would constitute human
12 trafficking or aggravated human trafficking, as defined by K.S.A. 2022
13 Supp. 22-5426, and amendments thereto, or commercial sexual
14 exploitation of a child, as defined by K.S.A. 2022 Supp. 21-6422, and
15 amendments thereto, or has committed an act which, if committed by an
16 adult, would constitute selling sexual relations, as defined by K.S.A. 2022
17 Supp. 21-6419, and amendments thereto.

18 (e) *"Child abuse medical resource center" means a medical*
19 *institution affiliated with an accredited children's hospital or a recognized*
20 *institution of higher education that has an accredited medical school*
21 *program with board-certified child abuse pediatricians who provide*
22 *training, support, mentoring and peer review to CARE providers on CARE*
23 *exams.*

24 (f) *"Child abuse review and evaluation exam" or "CARE exam"*
25 *means a forensic medical evaluation of a child alleged to be a victim of*
26 *abuse or neglect conducted by a CARE provider.*

27 (g) *"Child abuse review and evaluation network" or "CARE network"*
28 *means a network of CARE providers, child abuse medical resource centers*
29 *and any medical provider associated with a child advocacy center that has*
30 *the ability to conduct a CARE exam that collaborate to improve services*
31 *provided to a child alleged to be a victim of abuse or neglect.*

32 (h) *"Child abuse review and evaluation provider" or "CARE*
33 *provider" means a person licensed to practice medicine and surgery,*
34 *advanced practice registered nurse or licensed physician assistant who*
35 *performs CARE exams of and provides medical diagnosis and treatment to*
36 *a child alleged to be a victim of abuse or neglect and who receives:*

37 (1) *Kansas-based initial intensive training regarding child*
38 *maltreatment from the CARE network;*

39 (2) *continuous trainings on child maltreatment from the CARE*
40 *network; and*

41 (3) *peer review and new provider mentoring regarding medical*
42 *evaluations from a child abuse medical resource center.*

43 (i) *"Child abuse review and evaluation referral" or "CARE referral"*

1 *means a brief written review of allegations of physical abuse, emotional*
2 *abuse, medical neglect or physical neglect submitted by the secretary or*
3 *law enforcement agency to a child abuse medical resource center for a*
4 *recommendation of such child's need for medical care that may include a*
5 *CARE exam.*

6 (j) "Citizen review board" is a group of community volunteers
7 appointed by the court and whose duties are prescribed by K.S.A. 38-2207
8 and 38-2208, and amendments thereto.

9 ~~(k)~~ "Civil custody case" includes any case filed under chapter 23 of
10 the Kansas Statutes Annotated, and amendments thereto, the Kansas
11 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
12 and amendments thereto, determination of parentage, article 21 of chapter
13 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
14 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
15 Annotated, and amendments thereto, guardians and conservators.

16 ~~(l)~~ "Court-appointed special advocate" means a responsible adult
17 other than an attorney guardian ad litem who is appointed by the court to
18 represent the best interests of a child, as provided in K.S.A. 38-2206, and
19 amendments thereto, in a proceeding pursuant to this code.

20 ~~(m)~~ "Custody" whether temporary, protective or legal, means the
21 status created by court order or statute that vests in a custodian, whether an
22 individual or an agency, the right to physical possession of the child and
23 the right to determine placement of the child, subject to restrictions placed
24 by the court.

25 ~~(n)~~ "Extended out of home placement" means a child has been in
26 the custody of the secretary and placed with neither parent for 15 of the
27 most recent 22 months beginning 60 days after the date at which a child in
28 the custody of the secretary was removed from the child's home.

29 ~~(o)~~ "Educational institution" means all schools at the elementary
30 and secondary levels.

31 ~~(p)~~ "Educator" means any administrator, teacher or other
32 professional or paraprofessional employee of an educational institution
33 who has exposure to a pupil specified in K.S.A. 72-6143(a), and
34 amendments thereto.

35 ~~(q)~~ "Harm" means physical or psychological injury or damage.

36 ~~(r)~~ "Interested party" means the grandparent of the child, a person
37 with whom the child has been living for a significant period of time when
38 the child in need of care petition is filed, and any person made an
39 interested party by the court pursuant to K.S.A. 38-2241, and amendments
40 thereto, or Indian tribe seeking to intervene that is not a party.

41 ~~(s)~~ "Jail" means:

- 42 (1) An adult jail or lockup; or
- 43 (2) a facility in the same building or on the same grounds as an adult

1 jail or lockup, unless the facility meets all applicable standards and
2 licensure requirements under law and there is: (A) Total separation of the
3 juvenile and adult facility spatial areas such that there could be no
4 haphazard or accidental contact between juvenile and adult residents in the
5 respective facilities; (B) total separation in all juvenile and adult program
6 activities within the facilities, including recreation, education, counseling,
7 health care, dining, sleeping and general living activities; and (C) separate
8 juvenile and adult staff, including management, security staff and direct
9 care staff such as recreational, educational and counseling.

10 ~~(t)~~(t) "Juvenile detention facility" means any secure public or private
11 facility used for the lawful custody of accused or adjudicated juvenile
12 offenders that must not be a jail.

13 ~~(u)~~(u) "Juvenile intake and assessment worker" means a responsible
14 adult authorized to perform intake and assessment services as part of the
15 intake and assessment system established pursuant to K.S.A. 75-7023, and
16 amendments thereto.

17 ~~(v)~~(v) "Kinship care placement" means the placement of a child in the
18 home of an adult with whom the child or the child's parent already has
19 close emotional ties.

20 ~~(w)~~(w) "Law enforcement officer" means any person who by virtue of
21 office or public employment is vested by law with a duty to maintain
22 public order or to make arrests for crimes, whether that duty extends to all
23 crimes or is limited to specific crimes.

24 ~~(x)~~(x) "Multidisciplinary team" means a group of persons, appointed
25 by the court under K.S.A. 38-2228, and amendments thereto, that has
26 knowledge of the circumstances of a child in need of care.

27 ~~(y)~~(y) "Neglect" means acts or omissions by a parent, guardian or
28 person responsible for the care of a child resulting in harm to a child, or
29 presenting a likelihood of harm, and the acts or omissions are not due
30 solely to the lack of financial means of the child's parents or other
31 custodian. Neglect may include, but shall not be limited to:

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

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

38 (3) failure to use resources available to treat a diagnosed medical
39 condition if such treatment will make a child substantially more
40 comfortable, reduce pain and suffering, or correct or substantially diminish
41 a crippling condition from worsening. A parent legitimately practicing
42 religious beliefs who does not provide specified medical treatment for a
43 child because of religious beliefs shall, not for that reason, be considered a

1 negligent parent; however, this exception shall not preclude a court from
2 entering an order pursuant to K.S.A. 38-2217(a)(2), and amendments
3 thereto.

4 ~~(t)~~(z) "Parent" when used in relation to a child or children, includes a
5 guardian and every person who is by law liable to maintain, care for or
6 support the child.

7 ~~(v)~~(aa) "Party" means the state, the petitioner, the child, any parent of
8 the child and an Indian child's tribe intervening pursuant to the Indian
9 child welfare act.

10 ~~(w)~~(bb) "Permanency goal" means the outcome of the permanency
11 planning process, which may be reintegration, adoption, appointment of a
12 permanent custodian or another planned permanent living arrangement.

13 ~~(x)~~(cc) "Permanent custodian" means a judicially approved
14 permanent guardian of a child pursuant to K.S.A. 38-2272, and
15 amendments thereto.

16 ~~(y)~~(dd) "Physical, mental or emotional abuse" means the infliction of
17 physical, mental or emotional harm or the causing of a deterioration of a
18 child and may include, but shall not be limited to, maltreatment or
19 exploiting a child to the extent that the child's health or emotional well-
20 being is endangered.

21 ~~(z)~~(ee) "Placement" means the designation by the individual or
22 agency having custody of where and with whom the child will live.

23 ~~(aa)~~(ff) "Qualified residential treatment program" means a program
24 designated by the secretary for children and families as a qualified
25 residential treatment program pursuant to federal law.

26 ~~(bb)~~(gg) "Reasonable and prudent parenting standard" means the
27 standard characterized by careful and sensible parental decisions that
28 maintain the health, safety and best interests of a child while at the same
29 time encouraging the emotional and developmental growth of the child,
30 that a caregiver shall use when determining whether to allow a child in
31 foster care under the responsibility of the state to participate in
32 extracurricular, enrichment, cultural and social activities.

33 ~~(ee)~~(hh) "Relative" means a person related by blood, marriage or
34 adoption.

35 ~~(dd)~~(ii) "Runaway" means a child who is willfully and voluntarily
36 absent from the child's home without the consent of the child's parent or
37 other custodian.

38 ~~(ee)~~(jj) "Secretary" means the secretary for children and families or
39 the secretary's designee.

40 ~~(ff)~~(kk) "Secure facility" means a facility, other than a staff secure
41 facility or juvenile detention facility, that is operated or structured so as to
42 ensure that all entrances and exits from the facility are under the exclusive
43 control of the staff of the facility, whether or not the person being detained

1 has freedom of movement within the perimeters of the facility, or that
2 relies on locked rooms and buildings, fences or physical restraint in order
3 to control behavior of its residents. No secure facility shall be in a city or
4 county jail.

5 ~~(gg)~~(ll) "Sexual abuse" means any contact or interaction with a child
6 in which the child is being used for the sexual stimulation of the
7 perpetrator, the child or another person. Sexual abuse shall include, but is
8 not limited to, allowing, permitting or encouraging a child to:

- 9 (1) Be photographed, filmed or depicted in pornographic material; or
10 (2) be subjected to aggravated human trafficking, as defined in
11 K.S.A. 2022 Supp. 21-5426(b), and amendments thereto, if committed in
12 whole or in part for the purpose of the sexual gratification of the offender
13 or another, or be subjected to an act that would constitute conduct
14 proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or
15 K.S.A. 2022 Supp. 21-6419 or 21-6422, and amendments thereto.

16 ~~(hh)~~(mm) "Shelter facility" means any public or private facility or
17 home, other than a juvenile detention facility or staff secure facility, that
18 may be used in accordance with this code for the purpose of providing
19 either temporary placement for children in need of care prior to the
20 issuance of a dispositional order or longer term care under a dispositional
21 order.

22 ~~(ii)~~(nn) "Staff secure facility" means a facility described in K.S.A. 65-
23 535, and amendments thereto: (1) That does not include construction
24 features designed to physically restrict the movements and activities of
25 juvenile residents who are placed therein; (2) that may establish reasonable
26 rules restricting entrance to and egress from the facility; and (3) in which
27 the movements and activities of individual juvenile residents may, for
28 treatment purposes, be restricted or subject to control through the use of
29 intensive staff supervision. No staff secure facility shall be in a city or
30 county jail.

31 ~~(jj)~~(oo) "Transition plan" means, when used in relation to a youth in
32 the custody of the secretary, an individualized strategy for the provision of
33 medical, mental health, education, employment and housing supports as
34 needed for the adult and, if applicable, for any minor child of the adult, to
35 live independently and specifically provides for the supports and any
36 services for which an adult with a disability is eligible including, but not
37 limited to, funding for home and community based services waivers.

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

42 Sec. 3. K.S.A. 38-2226 is hereby amended to read as follows: 38-
43 2226. (a) *Investigation for child abuse or neglect*. The secretary and law

1 enforcement officers shall have the duty to receive and investigate reports
2 of child abuse or neglect for the purpose of determining whether the report
3 is valid and whether action is required to protect a child. Any person or
4 agency which maintains records relating to the involved child which are
5 relevant to any investigation conducted by the secretary or law
6 enforcement agency under this code shall provide the secretary or law
7 enforcement agency with the necessary records to assist in investigations.
8 In order to provide such records, the person or agency maintaining the
9 records shall receive from the secretary or law enforcement: (1) A written
10 request for information; and (2) a written notice that the investigation is
11 being conducted by the secretary or law enforcement. If the secretary and
12 such officers determine that no action is necessary to protect the child but
13 that a criminal prosecution should be considered, such law enforcement
14 officers shall make a report of the case to the appropriate law enforcement
15 agency.

16 (b) *Joint investigations.* When a report of child abuse or neglect
17 indicates: (1) That there is serious physical harm to, serious deterioration
18 of or sexual abuse of the child; and (2) that action may be required to
19 protect the child, the investigation shall be conducted as a joint effort
20 between the secretary and the appropriate law enforcement agency or
21 agencies, with a free exchange of information between them pursuant to
22 K.S.A. 38-2210, and amendments thereto. If a statement of a suspect is
23 obtained by either agency, a copy of the statement shall be provided to the
24 other.

25 (c) *Investigation of certain cases.* Suspected child abuse or neglect
26 which occurs in an institution operated by the Kansas department of
27 corrections shall be investigated by the attorney general or secretary of
28 corrections. Any suspected child abuse or neglect in an institution operated
29 by the Kansas department for aging and disability services, or by persons
30 employed by the Kansas department for aging and disability services or
31 the Kansas department for children and families, or of children of persons
32 employed by either department, shall be investigated by the appropriate
33 law enforcement agency.

34 (d) *Coordination of investigations by county or district attorney.* If a
35 dispute develops between agencies investigating a reported case of child
36 abuse or neglect, the appropriate county or district attorney shall take
37 charge of, direct and coordinate the investigation.

38 (e) *Investigations concerning certain facilities.* Any investigation
39 involving a facility subject to licensing or regulation by the secretary of
40 health and environment shall be promptly reported to the state secretary of
41 health and environment.

42 (f) *Cooperation between agencies.* Law enforcement agencies and the
43 secretary shall assist each other in taking action which is necessary to

1 protect a child regardless of which agency conducted the initial
2 investigation.

3 (g) *Cooperation between school personnel and investigative*
4 *agencies.* (1) Educational institutions, the secretary and law enforcement
5 agencies shall cooperate with each other in the investigation of reports of
6 suspected child abuse or neglect. The secretary and law enforcement
7 agencies shall have access to a child in a setting designated by school
8 personnel on the premises of an educational institution. Attendance at an
9 interview conducted on such premises shall be at the discretion of the
10 agency conducting the interview, giving consideration to the best interests
11 of the child. To the extent that safety and practical considerations allow,
12 law enforcement officers on such premises for the purpose of investigating
13 a report of suspected child abuse or neglect shall not be in uniform.

14 (2) The secretary or a law enforcement officer may request the
15 presence of school personnel during an interview if the secretary or officer
16 determines that the presence of such person might provide comfort to the
17 child or facilitate the investigation.

18 (h) *Visual observation required.* As part of any investigation
19 conducted pursuant to this section, the secretary, ~~or the secretary's~~
20 ~~designee~~, or the law enforcement agency, or such agency's designee, that is
21 conducting the investigation shall visually observe the child who is the
22 alleged victim of abuse or neglect. In the case of a joint investigation
23 conducted pursuant to subsection (b), the secretary and the investigating
24 law enforcement agency, or the designees of the secretary and such
25 agency, shall both visually observe the child who is the alleged victim of
26 abuse or neglect. All investigation reports shall include the date, time and
27 location of any visual observation of a child that is required by this
28 subsection.

29 (i) *Child abuse review and evaluation referrals.* (1) Upon
30 **{investigation by law enforcement or}** *assignment by the secretary of*
31 *any investigation of physical abuse or physical neglect conducted*
32 *pursuant to this section that concerns a child five years of age or younger,*
33 *the secretary, the law enforcement agency or the agency's designee shall*
34 *make a CARE referral for such child.*

35 (2) *In any other investigation of physical abuse, emotional abuse,*
36 *medical neglect or physical neglect conducted pursuant to this section, the*
37 *secretary, the law enforcement agency or the agency's designee may make*
38 *a CARE referral for such child.*

39 Sec. 4. K.S.A. 38-2202 and 38-2226 are hereby repealed.

40 Sec. 5. This act shall take effect and be in force from and after its
41 publication in the statute book.