

SENATE BILL No. 171

By Committee on Federal and State Affairs

2-2

9 AN ACT concerning the Kansas code for care of children; relating to out
10 of home care; amending K.S.A. 2004 Supp. 38-1502 and 38-1503 and
11 repealing the existing sections.
12

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

14 Section 1. K.S.A. 2004 Supp. 38-1502 is hereby amended to read as
15 follows: 38-1502. As used in this code, unless the context otherwise
16 indicates:

17 (a) “Child in need of care” means a person ~~less than 18 years of age~~
18 who:

19 (1) *Is less than 16 years of age and* without adequate parental care,
20 control or subsistence and the condition is not due solely to the lack of
21 financial means of the child’s parents or other custodian;

22 (2) *is less than 16 years of age and* without the care or control nec-
23 essary for the child’s physical, mental or emotional health;

24 (3) *is less than 18 years of age and* has been physically, mentally ~~or,~~
25 emotionally ~~abused or neglected~~ or sexually abused *or is less than 16 years*
26 *of age and has been neglected;*

27 (4) *is less than 18 years of age and* has been placed for care or adop-
28 tion in violation of law;

29 (5) *is less than 18 years of age and* has been abandoned or does not
30 have a known living parent;

31 (6) *is less than 16 years of age and* is not attending school as required
32 by K.S.A. 72-977 or 72-1111, and amendments thereto;

33 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)
34 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
35 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
36 4204a and amendments thereto, *is less than 16 years of age and* does an
37 act which, when committed by a person under 18 years of age, is prohib-
38 ited by state law, city ordinance or county resolution but which is not
39 prohibited when done by an adult;

40 (8) while less than 10 years of age, commits any act which if done by
41 an adult would constitute the commission of a felony or misdemeanor as
42 defined by K.S.A. 21-3105 and amendments thereto;

43 (9) *is less than 16 years of age and* is willfully and voluntarily absent

1 from the child's home without the consent of the child's parent or other
2 custodian;

3 (10) *is less than 16 years of age and* is willfully and voluntarily absent
4 at least a second time from a court ordered or designated placement, or
5 a placement pursuant to court order, if the absence is without the consent
6 of the person with whom the child is placed or, if the child is placed in a
7 facility, without the consent of the person in charge of such facility or
8 such person's designee;

9 (11) *is less than 16 years of age and* has been residing in the same
10 residence with a sibling or another person under 18 years of age, who has
11 been physically, mentally or emotionally abused or neglected, or sexually
12 abused; or

13 (12) while less than 10 years of age commits the offense defined in
14 K.S.A. 21-4204a and amendments thereto.

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

20 (c) "Sexual abuse" means any act committed with a child which is
21 described in article 35, chapter 21 of the Kansas Statutes Annotated and
22 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
23 thereto.

24 (d) "Parent," when used in relation to a child or children, includes a
25 guardian, conservator and every person who is by law liable to maintain,
26 care for or support the child.

27 (e) "Interested party" means the state, the petitioner, the child, any
28 parent, any grandparent and any person found to be an interested party
29 pursuant to K.S.A. 38-1541 and amendments thereto.

30 (f) "Law enforcement officer" means any person who by virtue of
31 office or public employment is vested by law with a duty to maintain
32 public order or to make arrests for crimes, whether that duty extends to
33 all crimes or is limited to specific crimes.

34 (g) "Youth residential facility" means any home, foster home or struc-
35 ture which provides 24-hour-a-day care for children and which is licensed
36 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

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

42 (i) "Juvenile detention facility" means any secure public or private
43 facility used for the lawful custody of accused or adjudicated juvenile

1 offenders which must not be a jail.

2 (j) "Adult correction facility" means any public or private facility, se-
3 cure or nonsecure, which is used for the lawful custody of accused or
4 convicted adult criminal offenders.

5 (k) "Secure facility" means a facility which is operated or structured
6 so as to ensure that all entrances and exits from the facility are under the
7 exclusive control of the staff of the facility, whether or not the person
8 being detained has freedom of movement within the perimeters of the
9 facility, or which relies on locked rooms and buildings, fences or physical
10 restraint in order to control behavior of its residents. No secure facility
11 shall be in a city or county jail.

12 (l) "Ward of the court" means a child over whom the court has ac-
13 quired jurisdiction by the filing of a petition pursuant to this code and
14 who continues subject to that jurisdiction until the petition is dismissed
15 or the child is discharged as provided in K.S.A. 38-1503 and amendments
16 thereto.

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

22 (n) "Placement" means the designation by the individual or agency
23 having custody of where and with whom the child will live.

24 (o) "Secretary" means the secretary of social and rehabilitation
25 services.

26 (p) "Relative" means a person related by blood, marriage or adoption
27 but, when referring to a relative of a child's parent, does not include the
28 child's other parent.

29 (q) "Court-appointed special advocate" means a responsible adult
30 other than an attorney guardian *ad litem* who is appointed by the court
31 to represent the best interests of a child, as provided in K.S.A. 38-1505a
32 and amendments thereto, in a proceeding pursuant to this code.

33 (r) "Multidisciplinary team" means a group of persons, appointed by
34 the court or by the state department of social and rehabilitation services
35 under K.S.A. 38-1523a and amendments thereto, which has knowledge
36 of the circumstances of a child in need of care. A multidisciplinary team
37 may serve as a community services team.

38 (s) "Jail" means:

39 (1) An adult jail or lockup; or

40 (2) a facility in the same building or on the same grounds as an adult
41 jail or lockup, unless the facility meets all applicable standards and licen-
42 sure requirements under law and there is (A) total separation of the ju-
43 venile and adult facility spatial areas such that there could be no haphaz-

- 1 ard or accidental contact between juvenile and adult residents in the
2 respective facilities; (B) total separation in all juvenile and adult program
3 activities within the facilities, including recreation, education, counseling,
4 health care, dining, sleeping, and general living activities; and (C) separate
5 juvenile and adult staff, including management, security staff and direct
6 care staff such as recreational, educational and counseling.
- 7 (t) “Kinship care” means the placement of a child in the home of the
8 child’s relative or in the home of another adult with whom the child or
9 the child’s parent already has a close emotional attachment.
- 10 (u) “Juvenile intake and assessment worker” means a responsible
11 adult authorized to perform intake and assessment services as part of the
12 intake and assessment system established pursuant to K.S.A. 75-7023, and
13 amendments thereto.
- 14 (v) “Abandon” means to forsake, desert or cease providing care for
15 the child without making appropriate provisions for substitute care.
- 16 (w) “Permanent guardianship” means a judicially created relationship
17 between child and caretaker which is intended to be permanent and self-
18 sustaining without ongoing state oversight or intervention by the secre-
19 tary. The permanent guardian stands in loco parentis and exercises all the
20 rights and responsibilities of a parent. A permanent guardian may be
21 appointed after termination of parental rights or without termination of
22 parental rights, if the parent consents and agrees to the appointment of
23 a permanent guardian. Upon appointment of a permanent guardian, the
24 child shall be discharged from the custody of the secretary.
- 25 (x) “Aggravated circumstances” means the abandonment, torture,
26 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.
- 27 (y) “Permanency hearing” means a notice and opportunity to be
28 heard is provided to interested parties, foster parents, preadoptive parents
29 or relatives providing care for the child. The court, after consideration of
30 the evidence, shall determine whether progress toward the case plan goal
31 is adequate or reintegration is a viable alternative, or if the case should
32 be referred to the county or district attorney for filing of a petition to
33 terminate parental rights or to appoint a permanent guardian.
- 34 (z) “Extended out of home placement” means a child has been in the
35 custody of the secretary and placed with neither parent for 15 of the most
36 recent 22 months beginning 60 days after the date at which a child in the
37 custody of the secretary was removed from the home.
- 38 (aa) “Educational institution” means all schools at the elementary and
39 secondary levels.
- 40 (bb) “Educator” means any administrator, teacher or other profes-
41 sional or paraprofessional employee of an educational institution who has
42 exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03 and
43 amendments thereto.

1 (cc) “Neglect” means acts or omissions by a parent, guardian or per-
2 son responsible for the care of a child resulting in harm to a child or
3 presenting a likelihood of harm and the acts or omissions are not due
4 solely to the lack of financial means of the child’s parents or other cus-
5 todian. Neglect may include but shall not be limited to:

6 (1) Failure to provide the child with food, clothing or shelter neces-
7 sary to sustain the life or health of the child;

8 (2) failure to provide adequate supervision of a child or to remove a
9 child from a situation which requires judgment or actions beyond the
10 child’s level of maturity, physical condition or mental abilities and that
11 results in bodily injury or a likelihood of harm to the child; or

12 (3) failure to use resources available to treat a diagnosed medical
13 condition if such treatment will make a child substantially more com-
14 fortable, reduce pain and suffering, correct or substantially diminish a
15 crippling condition from worsening. A parent legitimately practicing re-
16 ligious beliefs who does not provide specified medical treatment for a
17 child because of religious beliefs shall not for that reason be considered
18 a negligent parent; however, this exception shall not preclude a court from
19 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
20 amendments thereto.

21 (dd) “Community services team” means a group of persons, ap-
22 pointed by the court or by the state department of social and rehabilita-
23 tion services for the purpose of assessing the needs of a child who is
24 alleged to be a child in need of care.

25 Sec. 2. K.S.A. 2004 Supp. 38-1503 is hereby amended to read as
26 follows: 38-1503. (a) Proceedings concerning any child who appears to be
27 a child in need of care shall be governed by this code, except in those
28 instances when the Indian child welfare act of 1978 (25 U.S.C. §§ 1901
29 *et seq.*) applies.

30 (b) Subject to the uniform child custody jurisdiction and enforcement
31 act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the dis-
32 trict court shall have original jurisdiction to receive and determine pro-
33 ceedings under this code.

34 (c) When jurisdiction has been acquired by the court over the person
35 of a child in need of care it may continue until the child: (1) Has attained
36 the age of 21 years; (2) has been adopted; or (3) has been discharged by
37 the court. ~~Any child 18 years of age or over may request, by motion to~~
38 ~~the court, that the jurisdiction of the court cease. Subsequently, the court~~
39 ~~shall enter an order discharging the person from any further jurisdiction~~
40 ~~of the court.~~

41 (d) When it is no longer appropriate for the court to exercise juris-
42 diction over a child the court, upon its own motion or the motion of an
43 interested party, shall enter an order discharging the child. ~~Except upon~~

1 ~~request of the child, the court shall not enter an order discharging a child~~
2 ~~which reaches 18 years of age before completing the child's high school~~
3 ~~education until June 1 of the school year during which the child became~~
4 ~~18 years of age as long as the child is still attending high school.~~

5 (e) Unless the court finds that substantial injustice would result, the
6 provisions of this code shall govern with respect to acts or omissions oc-
7 ccurring prior to the effective date of this code, and amendments thereto,
8 and with respect to children alleged or adjudicated to have done or to
9 have been affected by the acts or omissions, to the same extent as if the
10 acts or omissions had occurred on or after the effective date of this code,
11 and amendments thereto, and the children had been alleged or adjudi-
12 cated to be children in need of care.

13 Sec. 3. K.S.A. 2004 Supp. 38-1502 and 38-1503 are hereby repealed.

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