

SENATE BILL No. 92

By Committee on Ways and Means

1-26

10 AN ACT concerning the Kansas code for care of children; relating to
11 jurisdiction; amending K.S.A. 2008 Supp. 38-2202 and 38-2203 and
12 repealing the existing ~~section~~ sections.
13

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

15 **Section 1. K.S.A. 2008 Supp. 38-2202 is hereby amended to**
16 **read as follows: 38-2202. As used in the revised Kansas code for**
17 **care of children, unless the context otherwise indicates:**

18 (a) “Abandon” or “abandonment” means to forsake, desert or,
19 without making appropriate provision for substitute care, cease
20 providing care for the child.

21 (b) “Adult correction facility” means any public or private fa-
22 cility, secure or nonsecure, which is used for the lawful custody of
23 accused or convicted adult criminal offenders.

24 (c) “Aggravated circumstances” means the abandonment, tor-
25 ture, chronic abuse, sexual abuse or chronic, life threatening ne-
26 glect of a child.

27 (d) “Child in need of care” means a person less than 18 years
28 of age at the time of filing of the petition or issuance of an ex parte
29 protective custody order pursuant to K.S.A. 2008 Supp. 38-2242,
30 and amendments thereto, who:

31 (1) Is without adequate parental care, control or subsistence
32 and the condition is not due solely to the lack of financial means of
33 the child’s parents or other custodian;

34 (2) is without the care or control necessary for the child’s phys-
35 ical, mental or emotional health;

36 (3) has been physically, mentally or emotionally abused or ne-
37 glected or sexually abused;

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

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

40 (6) is not attending school as required by K.S.A. 72-977 or 72-
41 1111, and amendments thereto;

42 (7) except in the case of a violation of K.S.A. 21-4204a, 41-727,
43 subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A.

- 1 79-3321, and amendments thereto, or, except as provided in para-
2 graph (12), does an act which, when committed by a person under
3 18 years of age, is prohibited by state law, city ordinance or county
4 resolution but which is not prohibited when done by an adult;
5 (8) while less than 10 years of age, commits any act which if
6 done by an adult would constitute the commission of a felony or
7 misdemeanor as defined by K.S.A. 21-3105, and amendments
8 thereto;
9 (9) is willfully and voluntarily absent from the child's home
10 without the consent of the child's parent or other custodian;
11 (10) is willfully and voluntarily absent at least a second time
12 from a court ordered or designated placement, or a placement pur-
13 suant to court order, if the absence is without the consent of the
14 person with whom the child is placed or, if the child is placed in a
15 facility, without the consent of the person in charge of such facility
16 or such person's designee;
17 (11) has been residing in the same residence with a sibling or
18 another person under 18 years of age, who has been physically,
19 mentally or emotionally abused or neglected, or sexually abused;
20 (12) while less than 10 years of age commits the offense defined
21 in K.S.A. 21-4204a, and amendments thereto; or
22 (13) has had a permanent custodian appointed and the perma-
23 nent custodian is no longer able or willing to serve.
24 (e) "Citizen review board" is a group of community volunteers
25 appointed by the court and whose duties are prescribed by K.S.A.
26 2008 Supp. 38-2207 and 38-2208, and amendments thereto.
27 (f) "Court-appointed special advocate" means a responsible
28 adult other than an attorney guardian ad litem who is appointed
29 by the court to represent the best interests of a child, as provided
30 in K.S.A. 2008 Supp. 38-2206, and amendments thereto, in a pro-
31 ceeding pursuant to this code.
32 (g) "Custody" whether temporary, protective or legal, means
33 the status created by court order or statute which vests in a custo-
34 dian, whether an individual or an agency, the right to physical pos-
35 session of the child and the right to determine placement of the
36 child, subject to restrictions placed by the court.
37 (h) "Extended out of home placement" means a child has been
38 in the custody of the secretary and placed with neither parent for
39 15 of the most recent 22 months beginning 60 days after the date at
40 which a child in the custody of the secretary was removed from the
41 home.
42 (i) "Educational institution" means all schools at the elemen-
43 tary and secondary levels.

- 1 (j) *“Educator” means any administrator, teacher or other pro-*
2 *fessional or paraprofessional employee of an educational institution*
3 *who has exposure to a pupil specified in subsection (a) of K.S.A. 72-*
4 *89b03, and amendments thereto.*
- 5 (k) *“Harm” means physical or psychological injury or damage.*
- 6 (l) *“Interested party” means the grandparent of the child, a per-*
7 *son with whom the child has been living for a significant period of*
8 *time when the child in need of care petition is filed, and any person*
9 *made an interested party by the court pursuant to K.S.A. 2008*
10 *Supp. 38-2241, and amendments thereto or Indian tribe seeking to*
11 *intervene that is not a party.*
- 12 (m) *“Jail” means:*
- 13 (1) *An adult jail or lockup; or*
- 14 (2) *a facility in the same building or on the same grounds as an*
15 *adult jail or lockup, unless the facility meets all applicable stan-*
16 *dards and licensure requirements under law and there is: (A) Total*
17 *separation of the juvenile and adult facility spatial areas such that*
18 *there could be no haphazard or accidental contact between juvenile*
19 *and adult residents in the respective facilities; (B) total separation*
20 *in all juvenile and adult program activities within the facilities,*
21 *including recreation, education, counseling, health care, dining,*
22 *sleeping and general living activities; and (C) separate juvenile and*
23 *adult staff, including management, security staff and direct care*
24 *staff such as recreational, educational and counseling.*
- 25 (n) *“Juvenile detention facility” means any secure public or pri-*
26 *vate facility used for the lawful custody of accused or adjudicated*
27 *juvenile offenders which must not be a jail.*
- 28 (o) *“Juvenile intake and assessment worker” means a responsi-*
29 *ble adult authorized to perform intake and assessment services as*
30 *part of the intake and assessment system established pursuant to*
31 *K.S.A. 75-7023, and amendments thereto.*
- 32 (p) *“Kinship care” means the placement of a child in the home*
33 *of the child’s relative or in the home of another adult with whom*
34 *the child or the child’s parent already has a close emotional*
35 *attachment.*
- 36 (q) *“Law enforcement officer” means any person who by virtue*
37 *of office or public employment is vested by law with a duty to main-*
38 *tain public order or to make arrests for crimes, whether that duty*
39 *extends to all crimes or is limited to specific crimes.*
- 40 (r) *“Multidisciplinary team” means a group of persons, ap-*
41 *pointed by the court under K.S.A. 2008 Supp. 38-2228, and amend-*
42 *ments thereto, which has knowledge of the circumstances of a child*
43 *in need of care.*

- 1 (s) “Neglect” means acts or omissions by a parent, guardian or
2 person responsible for the care of a child resulting in harm to a
3 child, or presenting a likelihood of harm, and the acts or omissions
4 are not due solely to the lack of financial means of the child’s par-
5 ents or other custodian. Neglect may include, but shall not be lim-
6 ited to:
- 7 (1) Failure to provide the child with food, clothing or shelter
8 necessary to sustain the life or health of the child;
- 9 (2) failure to provide adequate supervision of a child or to re-
10 move a child from a situation which requires judgment or actions
11 beyond the child’s level of maturity, physical condition or mental
12 abilities and that results in bodily injury or a likelihood of harm to
13 the child; or
- 14 (3) failure to use resources available to treat a diagnosed med-
15 ical condition if such treatment will make a child substantially more
16 comfortable, reduce pain and suffering, or correct or substantially
17 diminish a crippling condition from worsening. A parent legiti-
18 mately practicing religious beliefs who does not provide specified
19 medical treatment for a child because of religious beliefs shall not
20 for that reason be considered a negligent parent; however, this ex-
21 ception shall not preclude a court from entering an order pursuant
22 to subsection (a)(2) of K.S.A. 2008 Supp. 38-2217, and amendments
23 thereto.
- 24 (t) “Parent” when used in relation to a child or children, in-
25 cludes a guardian and every person who is by law liable to main-
26 tain, care for or support the child.
- 27 (u) “Party” means the state, the petitioner, the child, any parent
28 of the child and an Indian child’s tribe intervening pursuant to the
29 Indian child welfare act.
- 30 (v) “Permanency goal” means the outcome of the permanency
31 planning process which may be reintegration, adoption, appoint-
32 ment of a permanent custodian or another planned permanent living
33 arrangement.
- 34 (w) “Permanent custodian” means a judicially approved per-
35 manent guardian of a child pursuant to K.S.A. 2008 Supp. 38-2272,
36 and amendments thereto.
- 37 (x) “Physical, mental or emotional abuse” means the infliction
38 of physical, mental or emotional harm or the causing of a deterio-
39 ration of a child and may include, but shall not be limited to, mal-
40 treatment or exploiting a child to the extent that the child’s health
41 or emotional well-being is endangered.
- 42 (y) “Placement” means the designation by the individual or
43 agency having custody of where and with whom the child will live.

1 (z) *“Relative” means a person related by blood, marriage or*
 2 *adoption but, when referring to a relative of a child’s parent, does*
 3 *not include the child’s other parent.*

4 (aa) *“Secretary” means the secretary of social and rehabilita-*
 5 *tion services or the secretary’s designee.*

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

14 (cc) *“Sexual abuse” means any contact or interaction with a*
 15 *child in which the child is being used for the sexual stimulation of*
 16 *the perpetrator, the child or another person. Sexual abuse shall in-*
 17 *clude allowing, permitting or encouraging a child to engage in pros-*
 18 *titution or to be photographed, filmed or depicted in pornographic*
 19 *material.*

20 (dd) *“Shelter facility” means any public or private facility or*
 21 *home other than a juvenile detention facility that may be used in*
 22 *accordance with this code for the purpose of providing either tem-*
 23 *porary placement for children in need of care prior to the issuance*
 24 *of a dispositional order or longer term care under a dispositional*
 25 *order.*

26 (ee) *“Transition plan” means, when used in relation to a youth in the*
 27 *custody of the secretary, an individualized strategy for the provision of*
 28 *medical, mental health, education, employment and housing supports as*
 29 *needed for the adult and, if applicable, for any minor child of the adult,*
 30 *to live independently and specifically provides for the supports and any*
 31 *services for which an adult with a disability is eligible including, but not*
 32 *limited to, funding for home and community based services waivers.*

33 ~~(ee)~~ (ff) *“Youth residential facility” means any home, foster*
 34 *home or structure which provides 24-hour-a-day care for children*
 35 *and which is licensed pursuant to article 5 of chapter 65 of the*
 36 *Kansas Statutes Annotated, and amendments thereto.*

37 ~~Section 1.~~ **Sec. 2.** K.S.A. 2008 Supp. 38-2203 is hereby amended to
 38 read as follows: 38-2203. (a) Proceedings concerning any child who may
 39 be a child in need of care shall be governed by this code, except in those
 40 instances when the court knows or has reason to know that an Indian
 41 child is involved in the proceeding, in which case, the Indian child welfare
 42 act of 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare
 43 act may apply to: The filing to initiate a child in need of care proceeding

1 (K.S.A. 2008 Supp. 38-2234, and amendments thereto); ex parte custody
2 orders (K.S.A. 2008 Supp. 38-2242, and amendments thereto); temporary
3 custody hearing (K.S.A. 2008 Supp. 38-2243, and amendments thereto);
4 adjudication (K.S.A. 2008 Supp. 38-2247, and amendments thereto); bur-
5 den of proof (K.S.A. 2008 Supp. 38-2250, and amendments thereto); dis-
6 position (K.S.A. 2008 Supp. 38-2255, and amendments thereto); perma-
7 nency hearings (K.S.A. 2008 Supp. 38-2264, and amendments thereto);
8 termination of parental rights (K.S.A. 2008 Supp. 38-2267, 38-2268 and
9 38-2269, and amendments thereto); establishment of permanent custo-
10 dianship (K.S.A. 2008 Supp. 38-2268 and 38-2272, and amendments
11 thereto); the placement of a child in any foster, pre-adoptive and adoptive
12 home and the placement of a child in a guardianship arrangement under
13 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments
14 thereto.

15 (b) Subject to the uniform child custody jurisdiction and enforcement
16 act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the dis-
17 trict court shall have original jurisdiction of proceedings pursuant to this
18 code.

19 (c) The court acquires jurisdiction over a child by the filing of a pe-
20 tition pursuant to this code or upon issuance of an ex parte order pursuant
21 to K.S.A. 2008 Supp. 38-2242, and amendments thereto. When the court
22 acquires jurisdiction over a child in need of care, jurisdiction may con-
23 tinue until the child has: (1) ~~Attained the age of 21 years~~ *Become 18 years*
24 *of age, or until June 1 of the school year during which the child became*
25 *18 years of age if the child is still attending high school unless there is*
26 *no court approved transition plan, in which event jurisdiction may*
27 *continue until a transition plan is approved by the court or until*
28 *the child reaches the age of 21*; (2) been adopted; or (3) been dis-
29 charged by the court. ~~Any child 18 years of age or over may request, in~~
30 ~~writing to the court, that the jurisdiction of the court cease. The court~~
31 ~~shall give notice of the request to all parties and interested parties and~~
32 ~~30 days after receipt of the request, jurisdiction will cease. Any child 18~~
33 ~~years of age or over may request, in writing to the court, that the~~
34 ~~jurisdiction of the court cease. The court shall give notice of the~~
35 ~~request to all parties and interested parties and 30 days after receipt~~
36 ~~of the request, jurisdiction will cease.~~

37 (d) When it is no longer appropriate for the court to exercise juris-
38 diction over a child, the court, upon its own motion or the motion of a
39 party or interested party at a hearing or upon agreement of all parties or
40 interested parties, shall enter an order discharging the child. ~~Except upon~~
41 ~~request of the child pursuant to subsection (c),~~ **Except upon request of**
42 **the child pursuant to subsection (c),** ~~the court shall not enter an order~~
43 ~~discharging a child until June 1 of the school year during which the child~~

1 becomes 18 years of age if the child is in an out-of-home placement, is
2 still attending high school and has not completed the child's high school
3 education.

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

7 Sec. ~~2~~ **3**. K.S.A. 2008 Supp. **38-2202 and** 38-2203 ~~is~~ **are** hereby
8 repealed.

9 Sec. ~~3~~ **4**. This act shall take effect and be in force from and after its
10 publication in the statute book.