

SENATE BILL No. 92

By Committee on Ways and Means

1-26

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

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

14 Section 1. K.S.A. 2008 Supp. 38-2203 is hereby amended to read as
15 follows: 38-2203. (a) Proceedings concerning any child who may be a child
16 in need of care shall be governed by this code, except in those instances
17 when the court knows or has reason to know that an Indian child is in-
18 volved in the proceeding, in which case, the Indian child welfare act of
19 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may
20 apply to: The filing to initiate a child in need of care proceeding (K.S.A.
21 2008 Supp. 38-2234, and amendments thereto); ex parte custody orders
22 (K.S.A. 2008 Supp. 38-2242, and amendments thereto); temporary cus-
23 tody hearing (K.S.A. 2008 Supp. 38-2243, and amendments thereto); ad-
24 judication (K.S.A. 2008 Supp. 38-2247, and amendments thereto); burden
25 of proof (K.S.A. 2008 Supp. 38-2250, and amendments thereto); dispo-
26 sition (K.S.A. 2008 Supp. 38-2255, and amendments thereto); perma-
27 nency hearings (K.S.A. 2008 Supp. 38-2264, and amendments thereto);
28 termination of parental rights (K.S.A. 2008 Supp. 38-2267, 38-2268 and
29 38-2269, and amendments thereto); establishment of permanent custo-
30 dianship (K.S.A. 2008 Supp. 38-2268 and 38-2272, and amendments
31 thereto); the placement of a child in any foster, pre-adoptive and adoptive
32 home and the placement of a child in a guardianship arrangement under
33 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments
34 thereto.

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

39 (c) The court acquires jurisdiction over a child by the filing of a pe-
40 tition pursuant to this code or upon issuance of an ex parte order pursuant
41 to K.S.A. 2008 Supp. 38-2242, and amendments thereto. When the court
42 acquires jurisdiction over a child in need of care, jurisdiction may con-
43 tinue until the child has: (1) ~~Attained the age of 21 years~~ *Become 18 years*

Section 1. K.S.A. 2008 Supp.
38-2202 is hereby amended
to read as follows:
(see attached)

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1 of age, or until June 1 of the school year during which the child became
 2 18 years of age if the child is still attending high school; (2) been adopted;
 3 or (3) been discharged by the court. ~~Any child 18 years of age or over
 4 may request, in writing to the court, that the jurisdiction of the court
 5 cease. The court shall give notice of the request to all parties and inter-
 6 ested parties and 30 days after receipt of the request, jurisdiction will
 7 cease.~~

8 (d) When it is no longer appropriate for the court to exercise juris-
 9 diction over a child, the court, upon its own motion or the motion of a
 10 party or interested party at a hearing or upon agreement of all parties or
 11 interested parties, shall enter an order discharging the child. ~~Except upon
 12 request of the child pursuant to subsection (c),~~ The court shall not enter
 13 an order discharging a child until June 1 of the school year during which
 14 the child becomes 18 years of age if the child is in an out-of-home place-
 15 ment, is still attending high school and has not completed the child's high
 16 school education.

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

20 ~~Sec. 2.1 K.S.A. 2008 Supp. 38-2203 is hereby repealed.~~

21 ~~Sec. 3.1 This act shall take effect and be in force from and after its~~
 22 publication in the statute book.

unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21.

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

Except upon request of the child pursuant to subsection (c),

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ATTACHMENT

38-2202. Definitions. As used in the revised Kansas code for care of children, unless the context otherwise indicates:

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

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

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

(d) "Child in need of care" means a person less than 18 years of age who:

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

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

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

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

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

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

(7) except in the case of a violation of K.S.A. 21-4204a, 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

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

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

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

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

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

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

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2007 Supp. 38-2207 and 38-2208, and amendments thereto.

(f) "Court-appointed special advocate" means a responsible adult other than an attorney guardian *ad litem* who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2007 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

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

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

(i) "Educational institution" means all schools at the elementary and secondary levels.

(j) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and amendments thereto.

(k) "Harm" means physical or psychological injury or damage.

(l) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 2007 Supp. 38-2241, and amendments thereto.

(m) "Jail" means:

(1) An adult jail or lockup; or

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

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

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

(p) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(q) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain

public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(r) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2007 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

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

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

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

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 2007 Supp. 38-2217, and amendments thereto.

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

(u) "Party" means the state, the petitioner, the child and any parent of the child.

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

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2007 Supp. 38-2272, and amendments thereto.

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

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

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

(aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's designee.

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

(cc) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material.

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

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

(ee) "Transition plan" means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently.

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