

HOUSE BILL No. 2580

By Committee on Child Welfare and Foster Care

Requested by Laura Howard on behalf of the Kansas Department for Children and Families

1-24

1 AN ACT concerning children and minors; relating to the revised Kansas
2 code for care of children; providing authority for a court or a guardian
3 to consent to mental, emotional or behavioral health screening and
4 treatment of a child alleged or adjudicated to be a child in need of care;
5 granting immunity to providers who provide such screening and
6 treatment in good faith; defining behavioral health treatment; amending
7 K.S.A. 38-2217 and K.S.A. 2023 Supp. 38-2202 and repealing the
8 existing sections; also repealing K.S.A. 2023 Supp. 38-2202a.
9

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

11 Section 1. K.S.A. 2023 Supp. 38-2202 is hereby amended to read as
12 follows: 38-2202. As used in the revised Kansas code for care of children,
13 unless the context otherwise indicates:

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

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

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

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

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

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

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

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

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

34 (6) is not attending school as required by K.S.A. 72-3421 or 72-3120,

1 and amendments thereto;

2 (7) except in the case of a violation of K.S.A. 41-727, 74-8810(j), 79-
3 3321(m) or (n), or K.S.A. 21-6301(a)(14), and amendments thereto, or,
4 except as provided in paragraph (12), does an act which, when committed
5 by a person under 18 years of age, is prohibited by state law, city
6 ordinance or county resolution, but which is not prohibited when done by
7 an adult;

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

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

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

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

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

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

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

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

36 (f) "Child abuse review and evaluation exam" or "CARE exam"
37 means a forensic medical evaluation of a child alleged to be a victim of
38 abuse or neglect conducted by a CARE provider.

39 (g) "Child abuse review and evaluation network" or "CARE network"
40 means a network of CARE providers, child abuse medical resource centers
41 and any medical provider associated with a child advocacy center that has
42 the ability to conduct a CARE exam that collaborate to improve services
43 provided to a child alleged to be a victim of abuse or neglect.

1 (h) "Child abuse review and evaluation provider" or "CARE
2 provider" means a person licensed to practice medicine and surgery,
3 advanced practice registered nurse or licensed physician assistant who
4 performs CARE exams of and provides medical diagnosis and treatment to
5 a child alleged to be a victim of abuse or neglect and who receives:

6 (1) Kansas-based initial intensive training regarding child
7 maltreatment from the CARE network;

8 (2) continuous trainings on child maltreatment from the CARE
9 network; and

10 (3) peer review and new provider mentoring regarding medical
11 evaluations from a child abuse medical resource center.

12 (i) "Child abuse review and evaluation referral" or "CARE referral"
13 means a brief written review of allegations of physical abuse, emotional
14 abuse, medical neglect or physical neglect submitted by the secretary or
15 law enforcement agency to a child abuse medical resource center for a
16 recommendation of such child's need for medical care that may include a
17 CARE exam.

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

21 (k) "Civil custody case" includes any case filed under chapter 23 of
22 the Kansas Statutes Annotated, and amendments thereto, the Kansas
23 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
24 and amendments thereto, determination of parentage, article 21 of chapter
25 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
26 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
27 Annotated, and amendments thereto, guardians and conservators.

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

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

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

41 (o) "Educational institution" means all schools at the elementary and
42 secondary levels.

43 (p) "Educator" means any administrator, teacher or other professional

1 or paraprofessional employee of an educational institution who has
2 exposure to a pupil specified in K.S.A. 72-6143(a), and amendments
3 thereto.

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

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

10 (s) "Jail" means:

11 (1) An adult jail or lockup; or

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

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

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

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

32 (w) "Kinship caregiver" means an adult who the secretary has
33 selected for placement for a child in need of care with whom the child or
34 the child's parent already has close emotional ties.

35 (x) "Law enforcement officer" means any person who by virtue of
36 office or public employment is vested by law with a duty to maintain
37 public order or to make arrests for crimes, whether that duty extends to all
38 crimes or is limited to specific crimes.

39 (y) "Multidisciplinary team" means a group of persons, appointed by
40 the court under K.S.A. 38-2228, and amendments thereto, that has
41 knowledge of the circumstances of a child in need of care.

42 (z) "Neglect" means acts or omissions by a parent, guardian or person
43 responsible for the care of a child resulting in harm to a child, or

1 presenting a likelihood of harm, and the acts or omissions are not due
2 solely to the lack of financial means of the child's parents or other
3 custodian. Neglect may include, but shall not be limited to:

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

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

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

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

22 (bb) "Party" means the state, the petitioner, the child, any parent of
23 the child and an Indian child's tribe intervening pursuant to the Indian
24 child welfare act.

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

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

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

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

37 (gg) "Qualified residential treatment program" means a program
38 designated by the secretary for children and families as a qualified
39 residential treatment program pursuant to federal law.

40 (hh) "Reasonable and prudent parenting standard" means the standard
41 characterized by careful and sensible parental decisions that maintain the
42 health, safety and best interests of a child while at the same time
43 encouraging the emotional and developmental growth of the child, that a

1 caregiver shall use when determining whether to allow a child in foster
2 care under the responsibility of the state to participate in extracurricular,
3 enrichment, cultural and social activities.

4 (ii) "Relative" means a person related by blood, marriage or adoption.

5 (jj) "Runaway" means a child who is willfully and voluntarily absent
6 from the child's home without the consent of the child's parent or other
7 custodian.

8 (kk) "Secretary" means the secretary for children and families or the
9 secretary's designee.

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

17 (mm) "Sexual abuse" means any contact or interaction with a child in
18 which the child is being used for the sexual stimulation of the perpetrator,
19 the child or another person. Sexual abuse shall include, but is not limited to
20 to, allowing, permitting or encouraging a child to:

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

22 (2) be subjected to aggravated human trafficking, as defined in
23 K.S.A. 21-5426(b), and amendments thereto, if committed in whole or in
24 part for the purpose of the sexual gratification of the offender or another,
25 or be subjected to an act that would constitute conduct proscribed by
26 article 55 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 21-
27 6419 or 21-6422, and amendments thereto.

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

33 (oo) "Staff secure facility" means a facility described in K.S.A. 65-
34 535, and amendments thereto: (1) That does not include construction
35 features designed to physically restrict the movements and activities of
36 juvenile residents who are placed therein; (2) that may establish reasonable
37 rules restricting entrance to and egress from the facility; and (3) in which
38 the movements and activities of individual juvenile residents may, for
39 treatment purposes, be restricted or subject to control through the use of
40 intensive staff supervision. No staff secure facility shall be in a city or
41 county jail.

42 (pp) "Transition plan" means, when used in relation to a youth in the
43 custody of the secretary, an individualized strategy for the provision of

1 medical, mental health, education, employment and housing supports as
2 needed for the adult and, if applicable, for any minor child of the adult, to
3 live independently and specifically provides for the supports and any
4 services for which an adult with a disability is eligible including, but not
5 limited to, funding for home and community based services waivers.

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

10 (rr) "*Behavioral health crisis*" means behavioral and conduct issues
11 that impact the safety or health of a child, members of the child's
12 household or family or members of the community, including, but not
13 limited to, non-life threatening mental health and substance abuse
14 concerns.

15 (ss) "*Behavioral health treatment*" means any service intended to
16 promote the mental health of a child alleged or adjudicated to be a child
17 in need of care and rendered by a qualified professional, licensed or
18 certified by the state to provide such service as an independent
19 practitioner or under the supervision of such practitioner and the broad
20 range of emergency intermediate and inpatient services and care,
21 including, but not limited to, diagnostic evaluation, medical, psychiatric,
22 psychological and social service care, vocational rehabilitation and
23 career counseling, which may be extended to persons with an alcohol or
24 substance abuse problem.

25 Sec. 2. K.S.A. 38-2217 is hereby amended to read as follows: 38-
26 2217. (a) *Physical—~~or~~, mental—~~care~~, emotional or behavioral health*
27 *screening and treatment.* (1) When a child less than 18 years of age is
28 alleged to have been physically, mentally or emotionally abused or
29 neglected or sexually abused, no consent shall be required to medically
30 examine the child to determine whether the child has been abused or
31 neglected. Unless the child is alleged or suspected to have been abused by
32 the parent or guardian, the investigating officer shall notify or attempt to
33 notify the parent or guardian of the medical examination of the child.

34 (2) When the health or condition of a child who is subject to
35 jurisdiction of the court requires it, the court may consent to the
36 performing and furnishing of hospital, medical, surgical or dental
37 treatment or procedures, *mental, emotional or behavioral health screening*
38 *and treatment*, including the release and inspection of medical or dental
39 *and mental, emotional or behavioral health* records. A child, or parent of
40 any child, who is opposed to certain medical procedures *or mental,*
41 *emotional or behavioral health screening and treatment* authorized by this
42 subsection may request an opportunity for a hearing thereon before the
43 court. Subsequent to the hearing, the court may limit the performance of

1 matters provided for in this subsection or may authorize the performance
2 of those matters subject to terms and conditions the court considers proper.

3 (3) The custodian or agent of the custodian is the personal
4 representative for the purpose of consenting to disclosure of otherwise
5 protected health information and may give consent to the following:

6 (A) Dental treatment for the child by a licensed dentist;

7 (B) diagnostic examinations of the child, including but not limited to
8 the withdrawal of blood or other body fluids, x-rays and other laboratory
9 examinations;

10 (C) releases and inspections of the child's medical history records;

11 (D) immunizations for the child;

12 (E) administration of lawfully prescribed drugs to the child;

13 (F) examinations of the child including, but not limited to, the
14 withdrawal of blood or other body fluids or tissues for the purpose of
15 determining the child's parentage; ~~and~~

16 (G) subject to limitations in K.S.A. 59-3075(e)(4), (5) and (6), and
17 amendments thereto, medical or surgical care determined by a physician to
18 be necessary for the welfare of such child, if the parents are not available
19 or refuse to consent; *and*

20 (H) *mental, emotional or behavioral health screening and treatment*
21 *of such child, other than inpatient treatment at a state psychiatric hospital,*
22 *including the release and inspection of medical or hospital records, the*
23 *court considers proper subject to limitations in K.S.A. 59-3075(e)(4), (5)*
24 *and (6), and amendments thereto.*

25 (4) When the court has adjudicated a child to be in need of care, the
26 custodian or an agent designated by the custodian is the personal
27 representative for the purpose of consenting to disclosure of otherwise
28 protected health information and shall have authority to consent to the
29 performance and furnishing of hospital, medical, surgical or dental
30 treatment or procedures or ~~mental-care or~~ *emotional or behavioral health*
31 *screening and treatment other than inpatient treatment at a state psychiatric*
32 *hospital, including the release and inspection of medical or hospital*
33 *records, subject to terms and conditions the court considers proper and*
34 *subject to the limitations of K.S.A. 59-3075 (e)(4), (5) and (6), and*
35 *amendments thereto.*

36 (5) Any health care provider who in good faith renders hospital,
37 medical, surgical, mental, *emotional, or behavioral health* or dental care or
38 treatment to any child or discloses protected health information as
39 authorized by this section shall not be liable in any civil or criminal action
40 for failure to obtain consent of a parent.

41 (6) Nothing in this section shall be construed to mean that any person
42 shall be relieved of legal responsibility to provide care and support for a
43 child.

1 (b) *Care and treatment requiring court action.* If it is brought to the
2 court's attention, while the court is exercising jurisdiction over the person
3 of a child under this code, that the child may be a mentally ill person as
4 defined in K.S.A. 59-2946, and amendments thereto, or a person with an
5 alcohol or substance abuse problem as defined in K.S.A. 59-29b46, and
6 amendments thereto, the court may:

7 (1) Direct or authorize the county or district attorney or the person
8 supplying the information to file the petition provided for in K.S.A. 59-
9 2957, and amendments thereto, and proceed to hear and determine the
10 issues raised by the application as provided in the care and treatment act
11 for mentally ill persons or the petition provided for in K.S.A. 59-29b57,
12 and amendments thereto, and proceed to hear and determine the issues
13 raised by the application as provided in the care and treatment act for
14 persons with an alcohol or substance abuse problem; or

15 (2) authorize that the child seek voluntary admission to a treatment
16 facility as provided in K.S.A. 59-2949, ~~and amendments thereto,~~ or K.S.A.
17 59-29b49, and amendments thereto.

18 The application to determine whether the child is a mentally ill person
19 or a person with an alcohol or substance abuse problem may be filed in the
20 same proceedings as the petition alleging the child to be a child in need of
21 care, or may be brought in separate proceedings. In either event, the court
22 may enter an order staying any further proceedings under this code until
23 all proceedings have been concluded under the care and treatment act for
24 mentally ill persons or the care and treatment act for persons with an
25 alcohol or substance abuse problem.

26 Sec. 3. K.S.A. 38-2217 and K.S.A. 2023 Supp. 38-2202 and 38-
27 2202a are hereby repealed.

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