

HOUSE BILL No. 2025

By Representative Capps

1-11

1 AN ACT concerning the revised Kansas code for care of children; relating
2 to definitions; interested parties; amending K.S.A. 2018 Supp. 38-2202
3 and 38-2241 and repealing the existing sections; also repealing K.S.A.
4 2017 Supp. 38-2202, as amended by section 9 of chapter 107 of the
5 2018 Session Laws of Kansas.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2018 Supp. 38-2202 is hereby amended to read as
9 follows: 38-2202. As used in the revised Kansas code for care of children,
10 unless the context otherwise indicates:

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

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

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

19 (d) "Child in need of care" means a person less than 18 years of age
20 at the time of filing of the petition or issuance of an ex parte protective
21 custody order pursuant to K.S.A. 2018 Supp. 38-2242, and amendments
22 thereto, who:

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

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

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

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

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

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

34 (7) except in the case of a violation of K.S.A. 41-727, K.S.A. 74-
35 8810(j), K.S.A. 79-3321(m) or (n), or K.S.A. 2018 Supp. 21-6301(a)(14),
36 and amendments thereto, or, except as provided in paragraph (12), does an

1 act which, when committed by a person under 18 years of age, is
2 prohibited by state law, city ordinance or county resolution but which is
3 not prohibited when done by an adult;

4 (8) while less than 10 years of age, commits any act which if done by
5 an adult would constitute the commission of a felony or misdemeanor as
6 defined by K.S.A. 2018 Supp. 21-5102, and amendments thereto;

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

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

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

17 (12) while less than 10 years of age commits the offense defined in
18 K.S.A. 2018 Supp. 21-6301(a)(14), and amendments thereto;

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

21 (14) has been subjected to an act which would constitute human
22 trafficking or aggravated human trafficking, as defined by K.S.A. 2018
23 Supp. 21-5426, and amendments thereto, or commercial sexual
24 exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422, and
25 amendments thereto, or has committed an act which, if committed by an
26 adult, would constitute selling sexual relations, as defined by K.S.A. 2018
27 Supp. 21-6419, and amendments thereto.

28 (e) "Citizen review board" is a group of community volunteers
29 appointed by the court and whose duties are prescribed by K.S.A. 2018
30 Supp. 38-2207 and 38-2208, and amendments thereto.

31 (f) "Civil custody case" includes any case filed under chapter 23 of
32 the Kansas Statutes Annotated, and amendments thereto, the Kansas
33 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
34 and amendments thereto, determination of parentage, article 21 of chapter
35 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
36 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
37 Annotated, and amendments thereto, guardians and conservators.

38 (g) "Court-appointed special advocate" means a responsible adult
39 other than an attorney guardian ad litem who is appointed by the court to
40 represent the best interests of a child, as provided in K.S.A. 2018 Supp.
41 38-2206, and amendments thereto, in a proceeding pursuant to this code.

42 (h) "Custody" whether temporary, protective or legal, means the
43 status created by court order or statute which vests in a custodian, whether

1 an individual or an agency, the right to physical possession of the child and
2 the right to determine placement of the child, subject to restrictions placed
3 by the court.

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

8 (j) "Educational institution" means all schools at the elementary and
9 secondary levels.

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

14 (l) "Harm" means physical or psychological injury or damage.

15 (m) "Interested party" means the grandparent of the child, a person
16 with whom the child has been living for a significant period of time when
17 the child in need of care petition is filed, *a person who has filed a petition*
18 *for adoption pursuant to K.S.A. 59-2128, and amendments thereto, while*
19 *such petition is pending*, and any person made an interested party by the
20 court pursuant to K.S.A. 2018 Supp. 38-2241, and amendments thereto, or
21 Indian tribe seeking to intervene that is not a party.

22 (n) "Jail" means:

23 (1) An adult jail or lockup; or

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

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

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

41 (q) "Kinship care placement" means the placement of a child in the
42 home of an adult with whom the child or the child's parent already has
43 close emotional ties.

1 (r) "Law enforcement officer" means any person who by virtue of
2 office or public employment is vested by law with a duty to maintain
3 public order or to make arrests for crimes, whether that duty extends to all
4 crimes or is limited to specific crimes.

5 (s) "Multidisciplinary team" means a group of persons, appointed by
6 the court under K.S.A. 2018 Supp. 38-2228, and amendments thereto,
7 which has knowledge of the circumstances of a child in need of care.

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

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

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

19 (3) failure to use resources available to treat a diagnosed medical
20 condition if such treatment will make a child substantially more
21 comfortable, reduce pain and suffering, or correct or substantially diminish
22 a crippling condition from worsening. A parent legitimately practicing
23 religious beliefs who does not provide specified medical treatment for a
24 child because of religious beliefs shall not for that reason be considered a
25 negligent parent; however, this exception shall not preclude a court from
26 entering an order pursuant to K.S.A. 2018 Supp. 38-2217(a)(2), and
27 amendments thereto.

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

31 (v) "Party" means the state, the petitioner, the child, any parent of the
32 child and an Indian child's tribe intervening pursuant to the Indian child
33 welfare act.

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

37 (x) "Permanent custodian" means a judicially approved permanent
38 guardian of a child pursuant to K.S.A. 2018 Supp. 38-2272, and
39 amendments thereto.

40 (y) "Physical, mental or emotional abuse" means the infliction of
41 physical, mental or emotional harm or the causing of a deterioration of a
42 child and may include, but shall not be limited to, maltreatment or
43 exploiting a child to the extent that the child's health or emotional well-

1 being is endangered.

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

4 (aa) "Reasonable and prudent parenting standard" means the standard
5 characterized by careful and sensible parental decisions that maintain the
6 health, safety and best interests of a child while at the same time
7 encouraging the emotional and developmental growth of the child, that a
8 caregiver shall use when determining whether to allow a child in foster
9 care under the responsibility of the state to participate in extracurricular,
10 enrichment, cultural and social activities.

11 (bb) "Relative" means a person related by blood, marriage or
12 adoption.

13 (cc) "Runaway" means a child who is willfully and voluntarily absent
14 from the child's home without the consent of the child's parent or other
15 custodian.

16 (dd) "Secretary" means the secretary for children and families or the
17 secretary's designee.

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

26 (ff) "Sexual abuse" means any contact or interaction with a child in
27 which the child is being used for the sexual stimulation of the perpetrator,
28 the child or another person. Sexual abuse shall include, but is not limited
29 to, allowing, permitting or encouraging a child to:

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

31 (2) be subjected to aggravated human trafficking, as defined in
32 K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if committed in
33 whole or in part for the purpose of the sexual gratification of the offender
34 or another, or be subjected to an act which would constitute conduct
35 proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or
36 K.S.A. 2018 Supp. 21-6419 or 21-6422, and amendments thereto.

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

42 (hh) "Staff secure facility" means a facility described in K.S.A. 65-
43 535, and amendments thereto: (1) That does not include construction

1 features designed to physically restrict the movements and activities of
2 juvenile residents who are placed therein; (2) that may establish reasonable
3 rules restricting entrance to and egress from the facility; and (3) in which
4 the movements and activities of individual juvenile residents may, for
5 treatment purposes, be restricted or subject to control through the use of
6 intensive staff supervision. No staff secure facility shall be in a city or
7 county jail.

8 (ii) "Transition plan" means, when used in relation to a youth in the
9 custody of the secretary, an individualized strategy for the provision of
10 medical, mental health, education, employment and housing supports as
11 needed for the adult and, if applicable, for any minor child of the adult, to
12 live independently and specifically provides for the supports and any
13 services for which an adult with a disability is eligible including, but not
14 limited to, funding for home and community based services waivers.

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

19 Sec. 2. K.S.A. 2018 Supp. 38-2241 is hereby amended to read as
20 follows: 38-2241. (a) *Jurisdiction of the court.* Parties and interested
21 parties in a child in need of care proceedings are subject to the jurisdiction
22 of the court.

23 (b) *Rights of parties.* Subject to the authority of the court to rule on
24 the admissibility of evidence and provide for the orderly conduct of the
25 proceedings, the rights of parties to participate in a child in need of care
26 proceeding include, but are not limited to:

27 (1) Notice in accordance with K.S.A. 2018 Supp. 38-2236 and 38-
28 2239, and amendments thereto;

29 (2) present oral or written evidence and argument, to call and cross-
30 examine witnesses; and

31 (3) representation by an attorney in accordance with K.S.A. 2018
32 Supp. 38-2205, and amendments thereto.

33 (c) *Grandparents as interested parties.* (1) A grandparent of the child
34 shall be an interested party to a child in need of care proceeding.

35 (2) Grandparents shall have the participatory rights of parties
36 pursuant to subsection (b), except that the court may restrict those rights if
37 the court finds that it would be in the best interests of the child. A
38 grandparent may not be prevented under this paragraph from attending the
39 proceedings, having access to the child's official file in the court records or
40 making a statement to the court.

41 (d) *Persons with whom the child has been residing as interested*
42 *parties.* (1) Any person with whom the child has resided for a significant
43 period of time within six months of the date the child in need of care

1 petition is filed shall be made an interested party, if such person notifies
2 the court of such person's desire to become an interested party.
3 Notification may be made in writing, orally or by appearance at the initial
4 or a subsequent hearing on the child in need of care petition.

5 (2) Persons with interested party status under this subsection shall
6 have the participatory rights of parties pursuant to subsection (b), except
7 that the court may restrict those rights if the court finds that it would be in
8 the best interests of the child.

9 (e) *Persons who have filed a petition for adoption. (1) Any person*
10 *who has filed a petition for adoption pursuant to K.S.A. 59-2128, and*
11 *amendments thereto, shall be an interested party to a child in need of care*
12 *proceeding.*

13 (2) *Persons who have filed a petition for adoption pursuant to K.S.A.*
14 *59-2128, and amendments thereto, shall have the participatory rights of*
15 *parties pursuant to subsection (b), except that the court may restrict those*
16 *rights if the court finds that it would be in the best interests of the child. A*
17 *person who has filed a petition for adoption may not be prevented under*
18 *this paragraph from attending the proceedings, having access to the*
19 *child's official file in the court records or making a statement to the court.*

20 (f) *Other interested parties. (1) Any person with whom the child has*
21 *resided at any time, who is within the fourth degree of relationship to the*
22 *child, or to whom the child has close emotional ties may, upon motion, be*
23 *made an interested party if the court determines that it is in the best*
24 *interests of the child.*

25 (2) Any other person or Indian tribe seeking to intervene that is not a
26 party may, upon motion, be made an interested party if the court
27 determines that the person or tribe has a sufficient relationship with the
28 child to warrant interested party status or that the person's or tribe's
29 participation would be beneficial to the proceedings.

30 (3) The court may, upon its own motion, make any person an
31 interested party if the court determines that interested party status would
32 be in the best interests of the child.

33 ~~(g)~~ *Procedure for determining, denying or terminating interested*
34 *party status. (1) Upon the request of the court, the secretary shall*
35 *investigate the advisability of granting interested party status under this*
36 *section and report findings and recommendations to the court.*

37 (2) The court may deny or terminate interested party status under this
38 subsection if the court determines, after notice and a hearing, that a person
39 does not qualify for interested party status or that there is good cause to
40 deny or terminate interested party status.

41 (3) A person who is denied interested party status or whose status as
42 an interested party has been terminated may petition for review of the
43 denial or termination by the chief judge of the district in which the court

1 having jurisdiction over the child in need of care proceeding is located, or
2 a judge designated by the chief judge. The chief judge or the chief judge's
3 designee shall review the denial or termination within 30 days of receiving
4 the petition. The child in need of care proceeding shall not be stayed
5 pending resolution of the petition for review.

6 Sec. 3. K.S.A. 2017 Supp. 38-2202, as amended by section 9 of
7 chapter 107 of the 2018 Session Laws of Kansas and K.S.A. 2018 Supp.
8 38-2202 and 38-2241 are hereby repealed.

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